

DATE: February 28, 2019

TO: Mayor Chelminiak and Members of the City Council

FROM: Trisna Tanus, Legal Planner / Consulting Attorney (425) 452-2970
Trish Byers, Code Development Manager (425) 452-4241

SUBJECT: Public Hearing on Land Use Code Amendment (LUCA) to permit garden supply and nursery uses in residential districts when they have been operating continuously since before 1955.

I. BACKGROUND

The Bellevue Nursery began operations in 1954 under a license that was approved by the City Council. In 1955, the City adopted its first zoning ordinance which created a Single Family Residence District (R-8.5) where the Bellevue Nursery was located. The R-8.5 District did not permit garden supply or horticultural nurseries. The nursery use has been operating continuously at the same location in a nonconforming status from 1954 to the present. The zoning on the site has remained single family, though the district was renamed to Single Family Residential - 4 (R-4) when the City replaced its zoning ordinance with the Land Use Code (LUC) in 1978.

In January 2018, the new owners of the Bellevue Nursery applied for a Comprehensive Plan Amendment (CPA) to change the land use designation on the nursery parcel from Single Family-H (SF-H) to Neighborhood Business (NB).¹ Ultimately, the owners' purpose was to obtain NB zoning to legitimize the nursery as a permitted use and allow the establishment of complementary uses such as a café and landscaping services. The Bellevue Nursery CPA proceeded through the appropriate steps including SEPA review to Council review on November 26, 2018.

On November 26, 2018, Council held its final study session to discuss the 2018 CPAs which included the Bellevue Nursery CPA. In lieu of a CPA, Council requested staff to determine whether a LUCA could be written that would correct the Bellevue Nursery nonconformity and allow additional subordinate uses.

On December 10, 2018, staff returned to Council with an example of a proposed amendment to LUC 20.10.440 that could, if adopted, correct the nonconformity. The amendment would legitimize garden supply and nursery uses in residential districts, like R-4, when the nursery uses had been in continuous operation since before 1955. Because staff provided a proposed LUCA that could correct the nonconformity, Council voted to deny the Bellevue Nursery CPA and directed staff to come back with a schedule to process the proposed LUCA. Council also directed the staff to schedule the next study session and public hearing before the City Council rather than forwarding the proposal to the Planning Commission.

¹ Neighborhood Business is the name of both the land use designation in the Comprehensive Plan and the land use district. To obtain NB zoning, the Comprehensive Plan must be amended first so that the land use designation for the parcel is NB. The second step is to obtain a site-specific rezone from R-4 to NB.

II. REVIEW PROCESS

As a part of the CPA process of 2018, Bellevue Nursery sought a CPA to amend the land use designation from Single-Family High to Neighborhood Business. Council decided to pursue a LUCA instead.

On January 28, 2019 Council held a study session to review the attached LUCA and directed staff to schedule the LUCA for a public hearing on March 18, 2019. Materials from the January 28, 2019 study session can be found here.

<https://bellevue.legistar.com/LegislationDetail.aspx?ID=3845604&GUID=F7DFFE46-5F00-4E3F-BB59-952D6D0D7D1E>

The public hearing is scheduled for March 18, 2019. A hearing before the East Bellevue Community Council will be necessary subsequent to Council adoption.

III. PUBLIC ENGAGEMENT

Comprehensive Plan Amendment

Public engagement occurred throughout the CPA process as required. Please see the documents provided in the Council Library at the end of this staff report for more information.

Required Public Notice

The notice required for City Council legislative actions is governed by the terms of LUC sections 20.35.415 through 20.35.450. Notice of the Public Hearing is provided in Attachment B. The public hearing is scheduled for March 18, 2019, and availability of this staff report, will be published in the Weekly Permit Bulletin and in the Seattle Times on February 28, 2019. Both notices were also provided to members of the EBCC and those who expressed interest in the aforementioned CPA.

Pursuant to the Washington State Growth Management Act, proposed amendments to the Land Use Code must be sent to the Washington State Department of Commerce. A copy of the required transmittal to the Department of Commerce, including a copy of the draft LUCA, was transmitted on January 9, 2019 and is available for review in the code amendment file. The LUCA is identified by Commerce as ID_25686.

Participation in the Public Hearing

Any person may participate in the Public Hearing by submitting written comments to the City Council before the Public Hearing, or by submitting written comments or making oral comments to the City Council at the hearing. Written comments may also be submitted by mail to Trish Byers, Code Development Manager, Development Services Department, City of Bellevue, P.O. Box 90012, Bellevue, Washington, 98009-9012 or by e-mail to pbyers@bellevuewa.gov. **Comments must be received by 5:00 p.m. March 11, 2019.** All written comments received by the City Clerk or the Code Development Manager prior to the comment deadline will be transmitted to the City Council no later than the date of the Public Hearing.

The balance of this Staff Report analyzes the decision criteria in the LUC that must be met to support the nursery and garden supply LUCA.

IV. DECISION CRITERIA

LUC 20.30J.135 establishes the decision criteria for an application to amend the text of the LUC. Those criteria, and the relationship of these proposed amendment to them, are discussed below:

A. The amendment is consistent with the Comprehensive Plan; and

Finding: The City of Bellevue has adopted several policies listed below that support legitimization of these nursery and garden supply uses that were established before 1955, are in continuous use, and in the residential districts listed.

Comprehensive Plan

Land Use

Land Use

LU-1. Promote a clear strategy for focusing the city's growth and development as follows:

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3. Continue to provide for commercial uses and development that serve community needs.

LU-12. Promote maintenance and establishment of small-scale activity areas within neighborhoods that encourage pedestrian patronage and provide informal opportunities for residents to meet.

LU-13. Support neighborhood efforts to maintain and enhance their character and appearance.

LU-14. Protect residential areas from the impacts of nonresidential uses of a scale not appropriate to the neighborhood.

LU-29. Help communities to maintain their local, distinctive neighborhood character, while recognizing that some neighborhoods may evolve.

LU-31. Encourage development of amenities, services and facilities that are supportive of all types of families through investment, incentives and development regulations.

N-9. Preserve and develop distinctive neighborhood character within Bellevue's diverse neighborhoods.

N-11. Enable neighborhood-tailored solutions to localized issues while ensuring that they meet citywide responsibilities.

Housing

HO-3. Maintain the character of established single family neighborhoods, through adoption and enforcement of appropriate regulations.

HO-16. Provide opportunities and incentives through the Planned Unit Development (PUD) process for a variety of housing types and site planning techniques that can achieve the maximum housing potential of the site.

Economic Development

ED-1. Maintain a business climate that supports the retention and expansion of the city's economic base.

ED-2. Promote local businesses and locally-produced goods and services.

ED-5. Develop and maintain regulations that allow for continued economic growth while respecting the environment and quality of life of city neighborhoods.

ED-9 Work with the business community and residential interests to promote community interests and to address differences in a manner that minimizes conflict.

ED-15. Encourage high quality design and urban amenities for public and private development, maintaining development standards to recognize that a quality built environment helps attract the talented workers who will sustain economic growth.

ED-20. Recognize retail strength as an engine of economic activity and a magnet for visitors.

ED-24. Cultivate development of diverse, distinctive, well-defined places that invite community activity and gathering. Specifically facilitate the redevelopment and re-invigoration of older neighborhood shopping centers. Work with stakeholders to transform such centers into high quality and dynamic retail/mixed use commercial areas that also provide a gathering place and sense of community for the neighborhood. Allow for flexibility to repurpose and re-use a variety of building types to accommodate new uses.

ED-26. Where a commercial revitalization effort involves significant changes to plans and regulations that may impact a residential neighborhood, develop strategies to avoid or minimize these impacts.

ED-40. Encourage economic development through a mix of incentives, regulations, economic and planning data, business assistance services, and strategic investments that support the city's adopted plans.

West Bellevue Subarea Plan

Land Use Goals

- To provide for land use patterns and densities which minimize the conflict between zoning and existing land use.
- To protect and maintain the ingle-family residential neighborhoods through the application of zoning.

POLICY S-SW-2. Protect single-family residential neighborhoods from the adverse impacts of multifamily and commercial development.

POLICY S-SW-3. Limit expansion of retail service and professional office uses to locations where permitted by this subarea plan.

POLICY S-SW-4. Support neighborhood business areas to provide convenient local shopping opportunities.

Urban Design Goals

To encourage the preservation of the existing residential and arboreal character of Southwest Bellevue.

B. The amendment enhances the public health, safety or welfare; and

Finding: Enactment of this amendment will enhance the public health, safety or welfare by ensuring that the garden supply retail and nursery uses established before 1955 in residential zones are conforming. This allows for subordinate uses and other amenities that come along with conforming uses. Further, the amendment allows places like Bellevue Nursery to provide neighborhood goods, services and gathering places to neighborhoods in which they are located, thereby ensuring the welfare of the public. Redevelopment would be required to conform to correct dimensional requirements.

C. The amendment is not contrary to the best interest of the citizens and property owners of the City of Bellevue.

Finding: The LUCA is not contrary to the best interest of the citizens and property owners of the City of Bellevue because it maintains the underlying residential zoning while legitimizing a nursery use that has been in existence since before 1955. The Bellevue Nursery, and businesses like it, will be able to continue to serve their surrounding neighborhoods, establish subordinate uses like cafes and landscaping services, and can reconstruct the nursery buildings so long as the nursery continually remains in operation. If the nursery use is discontinued, the zoning will still be R-4 and only residential uses like the adjacent neighborhood would be allowed. The LUCA is unlike the requested 2018 Bellevue CPA proposed to change the zoning from R-4 to Neighborhood Business. The CPA would have changed the land use designation from SF-H to NB and could have resulted in a broader array of commercial uses that were opposed by the neighborhood adjacent to the Bellevue Nursery. This resolution addresses the concerns of the neighborhood and the owners while maintaining zoning that is consistent with the surrounding area while allowing reinvestment and revitalization of a nursery that has been operating at the same location since 1955.

V. **STATE ENVIRONMENTAL POLICY ACT**

A Determination of Nonsignificance (DNS) was issued pursuant to the threshold determination requirements in WAC 197-11-310 in the process for the CPA.

https://development.bellevuewa.gov/UserFiles/Servers/Server_4779004/File/pdf/Land%20Use/18-103877-AC-Bellevue-Nursery-CPA.pdf This DNS is only appealable as part of the City's action on the amendment to the LUC. In order to comply with requirements of SEPA and the State of Washington Growth Management Act for coordination of hearings, any appeal of the SEPA threshold determination herein will be considered by the Growth Management Hearings Board along with an appeal of the City Council's action. For information on how to appeal a proposal, visit the Permit Center at City Hall or call (425) 452-4188.

VI. **RECOMMENDATION**

Staff has prepared the draft LUCA for input during the required Public Hearing and for City Council consideration in Attachment C. This draft LUCA is intended to legitimize garden supply and nursery uses that were in operation since before 1955 and that are located in a residential district. The purpose of the public hearing on March 18 is to provide an opportunity for the

public to comment on the draft LUCA. The Council will consider these comments, make any necessary amendments based on the comment received if necessary, and direct staff to prepare an ordinance for final adoption.

ATTACHMENTS

1. Vicinity Map
2. Public Hearing Notice
3. Proposed Ordinance

AVAILABLE IN COUNCIL LIBRARY

November 26, 2018, City Council Study Session, Planning Commission recommendations to amend the Comprehensive Plan with five 2018 annual proposed plan amendments (CPA), and the city staff recommendation on the East Main amendment.

<https://bellevue.legistar.com/LegislationDetail.aspx?ID=3761577&GUID=3AA5B37D-FF3C-47BE-970F-8E5D36608516>

November 26, 2018, City Council Study Session Minutes

<https://bellevue.legistar.com/View.ashx?M=M&ID=608524&GUID=3CA6B858-C6EC-4015-9841-DF080815D6F4>

December 10, 2018, City Council Regular Session, Comprehensive Plan Final Review. Actions on Ordinances relating to the Comprehensive Plan of the City of Bellevue, consistent with the Growth Management Act (Ch. 36.70A RCW) and adopting certain proposed plan amendments as the City's 2018 Comprehensive Plan amendments.

<https://bellevue.legistar.com/LegislationDetail.aspx?ID=3774842&GUID=34852AB1-F39B-486C-A759-E2B11E00B436>

December 10, 2018, City Council Regular Session Minutes

<https://bellevue.legistar.com/View.ashx?M=M&ID=608527&GUID=C1116653-6E3B-4F4C-9778-99DB10AC4A26>

Bellevue Nursery LUCA



Attachment 2

NOTICE OF APPLICATION AND PUBLIC HEARING

Garden Supply Retail and Nursery Uses (Bellevue Nursery) Land Use Code Amendment (LUCA)

Location: Citywide

File Number: 19-102705-AD

Public Hearing: NOTICE IS HEREBY GIVEN that the **Bellevue City Council** will hold a public hearing during its 8:00 pm Regular Session on **Monday, March 18, 2019** in the City Council Chamber in Bellevue City Hall, 450 110th Ave NE, Bellevue. Commenting on the draft Garden Supply Retail and Nursery Uses LUCA: Any person may participate in the public hearing by submitting written comments before the public hearing, or by submitting written comments or making oral comments to the City Council at the hearing. Written comments will also be accepted by mail to Trish Byers, Code Development Manager, Development Services Department, City of Bellevue, P.O. Box 90012, Bellevue, Washington, 98009-9012 or by e-mail to pbyers@bellevuewa.gov. Comments must be received by 5:00 p.m. on March 11, 2019. All written comments received by the Code Development Manager will be transmitted to the City Council no later than the date of the public hearing.

Description: The City Council is considering a LUCA that, if adopted, will legitimize garden supply retail and nursery uses that have been in operation continually since before 1955 in the R-4, R-10, R-15, R-20, and R-30 Districts. Once the garden supply retail and nursery uses are discontinued, the underlying residential zoning will control the uses that are permitted on the parcels where the garden supply retail and nursery uses were located. The legitimization of these two uses as primary uses allows for subordinate uses to be established if they are on the same parcel, related to the primary use, and within 25 percent of the floor area of the primary use. The adoption of this LUCA also allows the owners to clear the site and rebuild if the garden supply retail or nursery uses remain in continuous operation.

This LUCA is following the adoption process for a development regulation under the State Growth Management Act (GMA) and is being integrated with review required under the State Environmental Policy Act (SEPA). The staff report analyzing the LUCA against decision criteria for amendments to the text of the Land Use Code and summarizing SEPA review process is attached.

Approvals Required: City Council approval.

SEPA: Determination of Nonsignificance (DNS) previously issued during the Bellevue Nursery Comprehensive Plan Amendment (CPA) process.

https://development.bellevuewa.gov/UserFiles/Servers/Server_4779004/1/file/pdf/1.and%20Use/18-103877-AC-Bellevue-Nursery-CPA.pdf The Environmental Coordinator has concluded that the DNS issued during the CPA process encompassed more than this ordinance does because it reviewed the possible environmental impacts of a land use designation amendment from Single-Family High to Neighborhood Business rather than a LUCA which allows the garden supply retail and nursery uses to become legitimate. The DNS is only appealable as part of the City's action on the amendment to the Land Use Code. To comply with requirements of SEPA and the State of Washington Growth Management Act for coordination of hearings, any appeal of the SEPA threshold determination will be considered by the Growth Management Hearings Board along with any appeal of the City Council's action to adopt the Garden Supply Retail and Nursery Uses LUCA.

Date of Application: November 26, 2018

Completeness Date: January 28, 2019

Notice of Application Date: February 28, 2019

Applicant: City of Bellevue

Applicant Contact: Trish Byers, Code Development Manager, 425-452-4241, pbyers@bellevuewa.gov

Questions relating to the public hearing process: Kyle Stannert, City Clerk, 425-452-6021

ATTACHMENT 3

20.10.440 Land use charts.

Chart 20.10.440 Uses in land use districts

Wholesale and Retail – Residential Districts

[illegible]

[illegible]

ATTACHMENT 3

STD LAND USE CODE REF	LAND USE CLASSIFICATION	R-1	R-1.8	R-2.5	R-3.5	R-4	R-5	R-7.5*	R-10	R-15	R-20	R-30
5961	Farm Supplies, Hay, Grain, Feed and Fencing, etc. (Retail)											
596	Retail Fuel Yards											
599669	Garden Supplies, Small Trees, Shrubs, Flowers, Ground Cover, Horticultural Nurseries and Light Supplies and Tools					(8)			(8)	(8)	(8)	(8)
5999	Pet Shop (Retail and Grooming)											
	Computers and Electronics (Retail)											

Notes: Uses in land use districts – Wholesale and Retail:

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(8) ~~Intentionally deleted.~~ Garden supply retail and nurseries are permitted uses in these residential districts when they have been operating continuously since prior to 1955.

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