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ORDINANCE NO. 6132 B-1

AN ORDINANCE amending the Bellevue Land Use Code to allow for the permitting and review of medical cannabis collective gardens; amending sections 20.10.440 and 20.25D.070; creating a new section 20.20.526 of the Bellevue Land Use Code; repealing Ordinance No. 6058, and establishing an effective date.

WHEREAS, E2SSB 5073 (the Act) effective on July 22, 2011 amended Chapter 69.51A RCW (the Medical Cannabis Act) and authorizes "collective gardens" which allows certain qualifying patients to produce, grown and deliver cannabis for medical use; and

WHEREAS, federal law prohibits the production, processing and dispensing of medical cannabis products, and strict federal sentencing guidelines enhance the penalties for violations involving more than 99 plants or occurring within 1000 feet of schools; and

WHEREAS, the City Council approved project principles for the regulation of medical cannabis collective gardens on February 25, 2013. The principles represent the Council's desire to prohibit locating collective gardens in residential areas and to prohibit the operation of dispensaries, access, points, portals, or other forms of commercial enterprises related to the cultivation, production, distribution, and transportation of medical marijuana. The land use code amendment (LUCA) herein is consistent with those project principles; 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 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 state law strictly enhances the penalties for violations of the Controlled Substances Act that occur within 1000 feet of a school; and

WHEREAS, the Act authorizes municipalities to exercise local location, health and safety controls for the regulation of collective gardens; and

WHEREAS, the acceptance of applications proposing development, establishment or licensing of collective gardens may allow new uses that are incompatible with nearby existing land uses and lead to erosion of community character and harmony; and

WHEREAS, the City Council finds that the proposed amendments meet the decision criteria of LUC 20.30J.135 and are consistent with the Comprehensive Plan, enhance the public health, safety and welfare, and are not contrary to the best interest of the citizens and property owners of the City of Bellevue; and

WHEREAS, the City of Bellevue has complied with the State Environmental Policy Act (SEPA), Chapter 43.21C RCW, and the City's Environmental Procedures Code, BCC 22.02; and

WHEREAS, the Planning Commission held a public hearing on July 24, 2013, for the proposed Land Use Code Amendment (LUCA) contained herein; and

WHEREAS, the Planning Commission recommends APPROVAL of the Medical Cannabis Collective Garden LUCA; now, therefore,

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

Section 1. Repeal. Ordinance No. 6058 is hereby repealed.

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Section 2. Section 20.10.440 (Resources use chart and notes) of the Bellevue Land use Code is hereby amended as follows:

20.10.440 Land use charts.
Chart 20.10.440

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Uses in land use districts STD LAND USE CODE REF	LAND USE CLASSIFICATION	Resources – Residential Districts										
		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
8	Resource Production (Minerals, Plants, Animals Including Pets and Related Services)											
81	Agriculture, Production of Food and Fiber Crops, Dairies, Livestock and Fowl, Excluding Hogs	P	P	P 1	P 1	P 1	P 1	P 1	P 1	P 1	P 1	P 1
8192	Other Horticultural Specialties: Medical Cannabis Collective Gardens											
821	Agricultural Processing											
8221	Veterinary Clinic and Hospital											
8222	Poultry Hatcheries											
83	Forestry, Tree Farms and Timber Production	P	P	C	C	C	C	C	C	C	C	C
8421	Fish Hatcheries											
85	Mining, Quarrying (Including Sand and Gravel), Oil and Gas Extraction	C	C	C	C	C	C	C	C	C	C	C

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Resources – Nonresidential Districts

STD LAND USE CODE REF	LAND USE CLASSIFICATION	Professional Office	Office	Office/Limited Business	Light Industry	General Commercial	Neighborhood Business	Community Business	Factoria Land Use District 1	Factoria Land Use District 2	Factoria Land Use District 3
		PO	O	OLB	LI	GC	NB	CB	F1	F2	F3
8	Resource Production (Minerals, Plants, Animals Including Pets and Related Services)										
81	Agriculture, Production of Food and Fiber Crops, Dairies, Livestock and Fowl, Excluding Hogs	P1	P1	P1	P1	P1	P1	P1	P1	P1	P1
8192	Other Horticultural Specialties: Medical Cannabis Collective Gardens				A (4)	A (4)					
821	Agricultural Processing				P 2						
8221	Veterinary Clinic and Hospital	P	P		P	P	P 3	P	P		
8222	Poultry Hatcheries				P	P					
83	Forestry, Tree Farms and Timber Production	C	C	C	C	C	C	C	C	C	C
8421	Fish Hatcheries				P						
85	Mining, Quarrying (Including Sand and Gravel), Oil and Gas Extraction	C	C	C	C	C	C	C	C	C	C

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Resources – Downtown Districts

STD LAND USE CODE REF	LAND USE CLASSIFICATION	Downtown Office District 1	Downtown Office District 2	Downtown Mixed Use District	Downtown Residential District	Downtown Old Bellevue District	Downtown Office and Limited Business District
		DNTN O-1	DNTN O-2	DNTN MU	DNTN R	DNTN OB	DNTN OLB
8	Resource Production (Minerals, Plants, Animals Including Pets and Related Services)						
81	Agriculture, Production of Food and Fiber Crops, Dairies, Livestock and Fowl, Excluding Hogs						
8192	Other Horticultural Specialties: Medical Cannabis Collective Gardens						
821	Agricultural Processing						
8221	Veterinary Clinic and Hospital			P			
8222	Poultry Hatcheries						
83	Forestry, Tree Farms and Timber Production						
8421	Fish Hatcheries						
85	Mining, Quarrying (Including Sand and Gravel), Oil and Gas Extraction						

Permitted uses in the Evergreen Highlands Design District (EH-A, EH-B, EH-C and EH-D) are listed in LUC 20.25F.010.

Permitted uses in the Office and Limited Business-Open Space District (OLB-OS) are listed in LUC 20.25L.020.

Permitted uses in the Medical Institution District are listed in LUC 20.25J.020.

Permitted uses in the Bel-Red District (BR) are listed in LUC 20.25D.070.

* Not effective within the jurisdiction of the East Bellevue Community Council.

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Notes: Uses in land use districts – Resources

(1) In the R-2.5, R-3.5, R-4, R-5, R-7.5, R-10, R-15, R-20, R-30, NB, PO, O, OLB, F1, F2, F3, LI, GC and CB Districts agriculture is limited to the production of food and fiber crops.

(2) Agriculture processing excludes grain mill products manufacturing and slaughtering in LI Districts.

(3) Veterinary clinics and hospitals are limited to 5,000 square feet per use in NB Districts.

(4) See LUC 20.20.526 for general requirements applicable to this use.

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Section 3. Section 20.25D.070 (Resource Uses in the Bel-Red District, use chart and notes) of the Bellevue Land use Code is hereby amended as follows:

20.25D.070 Land Use Charts.

The following charts apply to Bel-Red. The use charts contained in LUC 20.10.440 do not apply within the Bel-Red land use districts.

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Chart 20.25D.070
Resource Uses in the Bel-Red Districts.

		Resources – Bel Red Districts						
STD LAND USE CODE REF	LAND USE CLASSIFICATION	Bel-Red Medical Office/Node	Bel-Red Office Residential/Nodes	Bel-Red Residential Commercial Nodes	Bel-Red Residential	Bel-Red General Commercial	Bel-Red Commercial Residential	Bel-Red Office Residential Transition
		BR-MO/ MO-1	BR-OR/ OR-1 OR-2	BR-RC-1 RC-2 RC-3	BR-R	BR-GC	BR-CR	BR-ORT
8	Resource Production (Minerals, Plants, Animals Including Pets and Related Services)							
81	Agriculture, Production of Food and Fiber Crops, Dairies, Livestock and Fowl, Excluding Hogs					P 1	P 1	
8192	Other Horticultural Specialties: Medical Cannabis Collective Gardens					A (3)		
821	Agricultural Processing							
8221	Veterinary Clinic and Hospital (2)		P/P	P		P	P	P
8222	Poultry Hatcheries							
83	Forestry, Tree Farms and Timber Production							
8421	Fish Hatcheries							
85	Mining, Quarrying (Including Sand and Gravel), Oil and Gas Extraction							

Existing uses in the Bel-Red District are regulated pursuant to LUC 20.25D.060.

Key
P – Permitted Use
C – Conditional Use (see Parts 20.30B and 20.30C LUC)
A – Administrative Conditional Use (see Part 20.30E LUC)

Notes: Uses in land use districts – Resources.

(1) Agriculture production is limited to the production of food and fiber crops.

(2) See LUC 20.20.130 for general requirements applicable to this use.(3) See LUC 20.20.526 for general requirements applicable to this use.

Section 4. A new section 20.20.526 of the Bellevue Land Use Code is hereby adopted as follows:

20.20.526 Medical cannabis collective gardens.

A. Purpose.

The purpose of this section is to regulate medical cannabis collective gardens in a manner that minimizes the impacts of collective gardens on surrounding properties and protects the public health, safety, and welfare, while allowing qualified patients to create and participate in collective gardens. The creation of a collective garden means qualifying patients sharing responsibility for acquiring and supplying the resources required to produce and process cannabis for medical use. This may include resourcing a location for a collective garden; equipment, supplies, and labor necessary for proper construction, plumbing, wiring, and ventilation of a garden of cannabis plants.

B. Applicability.

This section contains development requirements and performance standards that apply to all applications to establish and operate a medical cannabis collective garden. Medical cannabis collective gardens are allowed in only in the General Commercial, Light Industrial, and Bel-Red General Commercial land use districts. See LUC Charts 20.10.440 and 20.25D.070 (Resources).

C. Submittal Requirements.

In addition to the information required for an Administrative Conditional Use permit (Part 20.30E LUC), an application for a collective garden shall comply with or contain the following:

1. The application shall be made by a qualifying patient and include verification of that status, as described in RCW 69.51A.010(4) and 69.51A.010(7), now or hereafter amended; and

2. A map drawn to scale that demonstrates compliance with the separation requirements of this section. The director may require the applicant, at the applicant's expense, demonstrate compliance with the separation requirements.

This demonstration may include, but is not limited to, a survey map showing these features prepared by a surveyor licensed in the state of Washington.

D. Required Review.

An administrative conditional use permit (Part 20.30E LUC) is required to operate a medical cannabis collective garden. The director shall review applications to operate a medical cannabis collective garden for compliance with this section, RCW 69.51A.085, now, or has hereafter amended, and with all other applicable provisions of the Bellevue City Code.

E. Definitions.

The following definitions apply to this section.

1. The definitions codified at RCW 69.51A.010, now, or as hereafter amended, shall apply to this section.

2. "Cannabis" shall mean all parts of the plant Cannabis, whether growing or not, with a THC concentration greater than 0.3 percent on a dry weight basis; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. The term does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

3. "Collective garden" shall mean the growing, of medical cannabis by qualifying patients as provided in Chapter 69.51A RCW, now or hereafter amended, and subject to the provisions of this section. A collective garden may also include ancillary processing and distribution of medical cannabis to support the collective garden. A location used solely for processing or distributing medical cannabis, or not meeting the requirements of this section shall not be considered a collective garden and is prohibited;

4. "Useable cannabis" means dried cannabis flowers. The term "useable cannabis" does not include cannabis-infused products.

5. "Way open to the public" means any paved or unpaved exterior areas on private property open to the general public for pedestrian or vehicular ingress or egress into a site or between sites that are open to and provide services to the public.

F. Requirements Applicable to Medical Cannabis Collective Gardens.

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All applications to operate a medical marijuana collective garden shall comply with the following requirements and the provisions of RCW 69.51A.085, now or hereafter amended:

1. Not more than one collective garden shall be established on a single tax parcel or lot;

2. A collective garden may not be located within 1,000 feet of public or private schools, child care services, child day care centers, religious institutions, youth-oriented facilities, public libraries, residential treatment facilities, public and private playgrounds, community centers, any other collective garden, or a recreational marijuana producer, processor, or retailer;

3. Required separation distances shall be measured as the shortest straight line distance from the property line of the licensed premises to the property line of a public or private schools, child care services, child day care centers, religious institutions, youth-oriented facilities, public libraries, residential treatment facilities, public and private playgrounds, community centers, any other collective garden, or a recreational marijuana producer, processor, or retailer;

4. A collective garden shall be located in a structure;

5. A collective garden may include ancillary uses for processing and delivering medical cannabis to its members; provided:

    a. The ancillary use shall be located on the same lot and in the same structure as the collective garden; and

    b. The total size allowed for ancillary processing and distribution necessary to support the collective garden shall not exceed more than10 percent of the floor area devoted to cultivating medical cannabis;

6. No collective garden shall be located in any manner or place where the cannabis plants may be viewed from an abutting public or private property;

7. A collective garden shall be ventilated so that the odor from the cannabis cannot be detected by a person with a normal sense of smell from any abutting use or property;

8. No more than 10 qualifying patients may participate in a single collective garden at any time;

9. A collective garden may contain no more than fifteen plants per qualifying patient up to a total of 45 plants;

10. A collective garden may contain no more than 24 ounces of useable cannabis per qualifying patient up to a total of 72 ounces of cannabis;

11. A copy of each qualifying patient's valid documentation, including a copy of the patient's proof of identity, must be available at all times on the premises of the collective garden;

12. A qualifying patient cannot be a member of more than one collective garden, and must be a member of one collective garden for at least thirty days before transferring their membership to another collective garden. Each collective garden must maintain records of its membership for no less than three years;

13. No useable cannabis from the collective garden shall be delivered to anyone other than one of the qualifying patients who has been a member of the collective garden for a minimum of 30 days;

14. Any transportation or delivery of medical cannabis from the collective garden shall be conducted by the collective members or designated provider so that quantities of medical cannabis allowed by RCW 69.51A.085, now or as hereafter amended, are never exceeded; and

15. A collective garden shall have a security alarm system on all perimeter entry points and perimeter windows. Motion detectors, pressure switches, duress, panic, and hold up alarms may also be used. The alarm system shall be monitored 24 hours per day.

16. A collective garden shall have a complete video surveillance system that is consistent with WAC 314-55-083 (3), now or as hereafter or amended.

17. All usable cannabis on the premises shall be stored in a substantially constructed and locked cabinet. The cabinet shall be incorporated into the building structure or securely attached thereto. For useable cannabis products that must be kept refrigerated or frozen, these products may be stored in a locked refrigerator or freezer container in a manner approved by the director, provided the container is affixed to the building structure.

18. A collective garden may only have one incidental sign that shall not exceed two square feet of sign area as allowed by the Bellevue Sign Code section 22B.10.020.

G. Release of Liability and Hold Harmless.

The permittee of a medical cannabis collective garden shall provide an executed release in a from approved by the Bellevue City Attorney's office to the City of Bellevue, for itself, its agents, officers, elected officials and employees from any injuries, damages, or liabilities of any kind that result from any arrest or prosecution or seizure of property, or liabilities of any kind that result from any arrest or prosecution for violations of federal or state law relating to operation or siting of a collective garden. Additionally, within the release document, the permittee of a medical cannabis collective garden shall indemnify and hold harmless the City of Bellevue and its agents, officers, elected officials, and

employees form any claims, damages, or injuries brought by adjacent property owners or other third parties due to operations at the collective garden and for any claims brought by any of the collective garden members, employees, agents, guests, or invitees for problems, injuries, damages, or liability of any kind that may arise out of the cultivation, processing, or distribution of medical cannabis at the collective garden.

H. Conflicts.

In the event of a conflict between RCW 69.51A.085 and this section, the most restrictive provision shall apply.

Section 5. 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 6. This ordinance shall take effect and be in force five (5) days after adoption and legal publication.

Passed by the City Council this 21st day of October, 2013 and signed in authentication of its passage this 21st day of October, 2013.

(SEAL)

Conrad Lee, Mayor

Approved as to form:

Lori M. Riordan, City Attorney

Attest:

Myrna L. Basich, City Clerk

Published: October 24, 2013.