

CITY OF BELLEVUE
CITY COUNCIL

Summary Minutes of Study Session

October 7, 2013
6:00 p.m.

Council Conference Room
Bellevue, Washington

PRESENT: Mayor Lee, Deputy Mayor Robertson, and Councilmembers Chelminiak, Davidson, Stokes¹ and Wallace

ABSENT: Councilmember Balducci

1. Executive Session

The meeting was called to order at 6:04 p.m., with Mayor Lee presiding. There was no Executive Session.

2. Study Session

- (a) Planning Commission Recommendation on Medical Cannabis Collective Garden Land Use Code Amendments

Acting City Manager Brad Miyake opened discussion regarding the proposed medical cannabis collective garden Land Use Code amendments. He recalled that the Council previously adopted interim zoning regulations to allow staff to work with the Planning Commission to develop permanent regulations.

Catherine Drews, Legal Planner, referred the Council to page 2-1 of the meeting packet for related materials. She recalled that the state legislature amended the Medical Cannabis Act in 2011. The amendment included regulations for dispensaries and Governor Gregoire vetoed most of the bill. However, regulations for medical cannabis collective gardens remained intact, creating a conflict with the federal controlled substances acts.

Ms. Drews said the City adopted an emergency ordinance on May 7, 2012, prohibiting collective gardens in residential land use districts. It allowed the gardens in the Light Industrial, Bel-Red General Commercial, General Commercial, and Medical Institution land use districts, and imposed a limit of one collective garden per tax lot. It required a 1,000-foot separation from uses associated with children. The emergency ordinance expires November 7, 2013 unless extended by the Council.

¹ Councilmember Stokes left at 6:54 p.m. due to illness.

Ms. Drews recalled that the Council directed the Planning Commission to develop recommendations for permanent regulations.

Diane Tebelius, Planning Commission Chair, presented the Commission's recommendation which amends the land use charts to allow collective gardens in the Light Industrial, General Commercial, and Bel-Red General Commercial districts. It establishes a new General Requirements section, LUC 20.20.526, and an administrative conditional use permit is required. The amendment requires a 1,000-foot separation from schools and other uses involving children.

Ms. Tebelius noted changes from the emergency ordinance as a result of the Planning Commission's review. The recommended LUCA eliminates the Medical Institution district to avoid unintended competition for the limited property available in that district. It describes the three land use districts where use is allowed in the Applicability Section. The amendment requires an operational security system at collective gardens and includes a release and hold harmless provision for the City.

Ms. Tebelius said she is a former federal prosecutor. She described the federal Department of Justice's guidance issued in August 2013 responding to the legalization of marijuana use in Colorado and Washington. She referred the Council to Attachment B beginning on page SS 2-21 of the meeting packet. The DOJ memorandum regarding marijuana enforcement specifies its enforcement priorities.

Ms. Tebelius drew attention to a statement at the bottom of the second page of the DOJ memorandum: "Jurisdictions that have implemented systems that provide for regulation of marijuana activity must provide the necessary resources and demonstrate the willingness to enforce their laws and regulations in a manner that ensures they do not undermine federal enforcement priorities." She believes that this is an important line, based on her experience as a federal prosecutor.

Ms. Tebelius highlighted an additional sentence on the third page of the DOJ memorandum (referring to medical marijuana vs. for-profit commercial enterprises): "In drawing this distinction, the Department relied on the common-sense judgment that the size of a marijuana operation was a reasonable proxy for assessing whether marijuana trafficking implicates the federal enforcement priorities set forth above." She believes this is an important statement to consider in establishing regulations for medical marijuana collective gardens. However, she noted that the next paragraph of the memo indicates that federal enforcement should not be based solely on an organization's size.

Ms. Tebelius opined that news articles have not provided a fully accurate report on the DOJ memorandum. It indicates that the Department will continue to use its resources to address the most significant threats to public safety related to marijuana. She said the passage of I-502 regarding recreational marijuana use has no impact, according to the City's legal department, on the state collective garden provision.

Ms. Drews said staff is requesting Council direction to return on October 21 with a final ordinance for adoption or to take alternative action.

Responding to Councilmember Davidson, Ms. Drews confirmed that state law addresses two separate uses of marijuana: medical marijuana and the regulated recreational marijuana industry. In further response, Ms. Drews said an individual or group could not grow or produce marijuana for both purposes. Recreational marijuana producers can sell only to a processor or retailer licensed by the State. A retailer cannot fill a medical marijuana prescription.

Deputy Mayor Robertson noted that collective gardens cannot be within 1,000 feet of other collective gardens. She questioned whether the City's Land Use Code should require a separation distance between medical and recreational grow operations.

Ms. Robertson said she attended the Planning Commission meeting and public hearing. Several individuals testified and there was a good, productive discussion by the Commission. The Commission had concerns that marijuana businesses should not be allowed in the Medical Institution district because they would compete with other traditional medical uses for the limited property available.

Ms. Robertson said she supports the collective gardens ordinance as written with one revision [Page 8 of 9 of ordinance on page SS 2-18 of meeting packet]. She suggested revising Item 6, which prohibits locating cannabis where it can be viewed or smelled from a "public place or way open to the public" to add "or from an abutting property." Responding to Ms. Tebelius, Ms. Robertson said she would like this to include abutting private property.

Ms. Robertson suggested, for the record, adding to the Council's state legislative agenda an item to focus on encouraging the streamlining and/or consolidation of medical marijuana and social use regulations. She noted that some cities have interpreted state legislation regarding medical marijuana collective gardens to include dispensaries. Ms. Robertson said the tax obligations are different between the two uses, and medical marijuana collective gardens are not licensed by the State Liquor Control Board. She would prefer one set of rules or greater clarification in the areas of confusion between the two sets of regulations.

Responding to Councilmember Chelminiak, Ms. Tebelius said the Planning Commission, in its discussion about the Medical Institution district, determined that it was a small area and did not want to combine medical marijuana uses within an area in which prescription drugs legal under federal law are sold.

In further response to Mr. Chelminiak, Ms. Drews said the collective gardens would be located in warehouses or smaller industrial spaces. The collective garden facility could also function as a place for patients to pick up their medical marijuana. Ms. Drews said staff anticipates applying the existing Sign Code for these facilities, as written and applied within land use districts.

Mr. Chelminiak observed that the security provision is not adequate, especially given the value of the product on the black market. Ms. Drews said the security measures in the recommended LUCA match the I-502 draft rules. She said she looked at regulations for traditional pharmacies and did not find any requirements on security measures, but she will research further.

Responding to Dr. Davidson, Ms. Drews said the Medical Cannabis Act does restrict the amount of cannabis a person can have in his or her possession at one time.

Councilmember Stokes suggested directing staff to bring back the ordinance for final action. He hopes the State will streamline regulations for the two types of marijuana uses. He thanked staff and the Planning Commission for their work on this issue.

Mayor Lee concurred with the security concerns raised by Councilmember Chelminiak.

Deputy Mayor Robertson observed there is a Council consensus that staff bring back an ordinance on October 21. She noted Council interest in more information on security requirements, adding language to prohibit cannabis plants where they can be viewed or smelled from abutting properties (including private properties), and information on whether to require the separation of medical and recreational marijuana growing facilities.

Councilmember Wallace expressed concern about the potential for a residential property being located next to a commercial property that is being used for a medical marijuana collective garden. Ms. Drews said the use would need to meet the underlying requirements of the transition zone, and the gardens must be located inside a building. Councilmember Wallace said there could still be issues with odor.

Ms. Robertson suggested that staff identify whether there are locations in which residential property abuts the districts allowed for medical marijuana gardens. She observed that her suggestion to add language prohibiting the ability to see or smell marijuana from abutting properties would address this concern. As an alternative, she asked staff to analyze the impact of adding residential property to the 1,000-foot separation provision.

Mayor Lee thanked staff and asked them to return with the requested information and proposed final ordinance.

Ms. Tebelius thanked Ms. Drews for her good work on this difficult issue and new area of regulation.

- (b) Consideration of staff recommendations related to adopting an interim zoning ordinance to impose interim land use regulations for recreational marijuana producers, processors, and retailers as allowed under I-502.

Mr. Miyake introduced discussion of regulations under I-502, which legalizes recreational marijuana production and usage.

Carol Helland, Land Use Director, said staff is requesting Council direction regarding the preparation of an emergency interim zoning ordinance addressing the appropriate land use zones for recreational marijuana producers, processors and retailers.

Ms. Drews recalled that I-502 was passed by the voters on November 6, 2012. It requires the Washington State Liquor Control Board to implement regulations by the end of the year. The

Board will license three uses: producers, processors and retailers. The Board will begin accepting license applications on November 18. The current schedule indicates that operations would begin in Spring 2014. These regulations do not impact medical cannabis use.

Ms. Drews said staff recommends an emergency interim zoning ordinance because there is not sufficient time to properly process a LUCA with the involvement of the Planning Commission by November 18.

Ms. Drews said the interim zoning recommendations are based on a review of the Comprehensive Plan and Land Use Code to determine compatibility with underlying land use zones and a review of existing uses in the Land Use Code for compatibility with marijuana producers, processors, and retailers.

The interim zoning regulations prohibit any I-502 licensed facilities in residential zones and prohibit I-502 retail uses as subordinate or ancillary uses. The latter is prohibited by the State Liquor Control Board unless there is a separate wall.

[Councilmember Stokes left the meeting at 6:54 p.m.]

Ms. Drews described the three types of licenses: producer, processor, and retailer. The State is regulating retailers similar to a liquor store. City staff suggest it is reasonable to locate retailers in the same zones as liquor stores as a Miscellaneous Retail Use, with limitations. Staff recommends prohibiting retailers in residential land use districts and the Medical Institution district, consistent with regulations for medical marijuana collective gardens.

For recreational marijuana producers and processors, staff suggests that the Planning Commission consider whether to limit production to indoors. Agricultural processing is currently allowed only in the LI district, while agricultural production is allowed more broadly. Staff recommends limiting both types of facilities to the LI district.

Ms. Drews said next steps are to seek Council direction to prepare an emergency interim zoning ordinance for Council action on October 21. Staff proposes preparing and presenting planning principles for Council consideration, which will be used by the Planning Commission to develop permanent regulations. The Commission's recommendations will ultimately be presented to the Council for final review and action.

Deputy Mayor Robertson thanked staff for their work and said that four retail licenses have been allocated to Bellevue. Responding to Ms. Robertson, Ms. Drews said the 11 at-large licenses for King County will go to unincorporated areas or to cities that currently do not have an allocation. Bellevue will have only four retail stores.

In further response to Ms. Robertson, Ms. Drews confirmed that it will likely be possible to limit producers to indoor growing. However, staff suggests following the State's rules for the emergency ordinance and using the time while the interim regulations are in place to explore the feasibility of other options. Ms. Robertson said she would prefer to require a structure and/or screening standards.

Ms. Helland said staff will look seriously at the preemption issue as part of the Planning Commission's recommendation of permit regulations. Staff conducted a zoning analysis for the emergency ordinance and will conduct the preemption analysis with the Planning Commission. Ms. Helland noted that outdoor growing is not considered to be viable for western Washington due to the climate and/or cost of land.

Deputy Mayor Robertson spoke in favor of adopting the emergency ordinance. Individuals are looking now for places to locate their businesses and it is important to let them know what Bellevue's regulations are likely to be. She would prefer to start out being more restrictive on where to allow them and believes the LI district is appropriate for production and processing.

Ms. Robertson said she does not want the transfer of the finished product to be visible to children or the general public, in part due to security concerns. She is uncomfortable with allowing retailers in the Neighborhood Business zone. She would like more information on the Downtown districts regarding the visibility of products and the number of retail outlets that could be accommodated given the 1,000-foot separation rule.

Ms. Robertson said the City might want to modify the Sign Code for these businesses. She requested information on the State's draft rules pertaining to signage. She thanked staff for their work on this issue.

Councilmember Chelminiak reiterated his security concerns: How will the product/s be secured? Should the City establish security requirements?

Responding to Mayor Lee, Ms. Drews said the state law provides an incentive for the combined producer/processor license in the form of a tax break.

In further response to Mr. Lee regarding her earlier reference to preemption, Ms. Helland said it is possible that the Liquor Control Board will have the authority to occupy the regulatory field with regard to recreational marijuana. If that is the case, the City's ability to regulate may be foreclosed. She suggested the City focus on regulating those areas in which the State has not yet occupied with its own regulations. She said that is what she meant by the phrase preemption.

Ms. Helland said it is clear that the State has occupied the licensing field, and the State also provides signage guidelines. The City will need to evaluate whether it has any authority to regulate signage beyond the State's rules. Responding to Mayor Lee, Ms. Helland said staff will continue its legal analysis to identify areas that are eligible for regulation by the City.

Councilmember Wallace noted his ongoing concern regarding odors associated with marijuana production. His understanding is that odor problems are addressed through the Nuisance Code. He suggested exploring a more strict code such as the City of Seattle's. Ms. Helland suggested approaching it in the same way as discussed for medical marijuana, which is to prohibit the odor from affecting abutting private and public property.

Responding to Deputy Mayor Robertson, Ms. Helland referred to page SS 2-29 of the meeting packet for a list of uses protected by the 1,000-foot separation rule: schools, playgrounds, recreation center or facility, public parks, libraries, child care centers, public transit centers, and game arcades.

Responding to Mayor Lee, Ms. Helland said staff will bring an ordinance for Council consideration on October 21 as well as responses to issues raised by the Council this evening. Upon adoption of the emergency ordinance, a public hearing is required within 60 days. The Council and staff will discuss draft principles and develop a work plan for the Planning Commission's review at the time of the public hearing.

(c) Downtown Transportation Plan Recommendations

Mr. Miyake opened discussion regarding the Downtown Transportation Plan and the Transportation Commission's recommendations regarding the Plan.

Mayor Lee welcomed Commissioner Scott Lampe and staff, and apologized for postponing this item from the September 23 agenda.

Transportation Director Dave Berg said the Downtown Transportation Plan update is coordinated with work on the Downtown Livability Initiative to identify policies and project descriptions for the Downtown Subarea Plan and the Downtown Land Use Code. The purpose of tonight's item is to review the recommended mobility options for the Downtown Transportation Plan update and to receive Council direction regarding policies, projects, and Land Use Code amendments. Mr. Berg noted that Ernie Simas is both Chair of the Transportation Commission and Co-Chair of the Downtown Livability Initiative Steering Committee.

Scott Lampe, Vice Chair of the Transportation Commission, said that Vic Bishop of the Transportation Commission was also present in the audience.

Mr. Lampe briefly summarized the handout of the Commission's recommendations for the Downtown Transportation Plan, which includes mobility options to meet every user's needs. He said the DTP and the Downtown Livability Initiative will be integrated and submitted as a package for the Council's consideration. The Commission recommends investments in pedestrian facilities that make it easier and more attractive for moving throughout the Downtown. Mr. Lampe said the Commission believes that transportation infrastructure needs to be congruent with the type of land use growth anticipated.

Kevin McDonald, Senior Planner, described the extensive public involvement process during the past two years including walking and bike tours, open houses, presentations to community and business groups, seven City Council briefings, 25 Transportation Commission meetings, presentations to professional associations, and information provided on the City's web site.

Mr. McDonald reviewed the Planning Principles adopted by the Council on February 6, 2012. He reported on Downtown population and employment growth since 1990 and presented the 2030 forecast. Mr. McDonald said daily person trips are expected to increase from 385,000 in

2010 to 665,000 in 2030. Downtown mobility options are organized into four categories: vehicles, transit, bicycles, and pedestrians.

Responding to Councilmember Wallace, Mr. McDonald confirmed that average intersection vehicle delay and level of service projections assume the completion of Phase 2 of the I-405 Master Plan.

Mr. McDonald described anticipated roadway capacity under the 2030 Baseline and the 2030 Build alternatives. Responding to Councilmember Davidson, Mr. McDonald confirmed that the scenarios do not include a new interchange at NE 2nd Street. However, it does reflect the widening of NE 2nd Street.

Mr. McDonald described options for on-street parking including permanent or off-peak parking, potentially with pay parking. Responding to Dr. Davidson, Mr. McDonald said this analysis looked only at parking capacity and not at the impact of parking maneuvers on traffic throughput. In further response, he said that bus layover spaces are in effect 24 hours per day. He said the subject of pay parking was discussed during the last budget cycle.

Deputy Mayor Robertson said she recalled when the pay parking issue came up as budget proposal. However, she does not remember all of the details of that discussion. She does not want to discourage customers from going to certain businesses, especially where there is street parking in Old Bellevue. If pay parking is to be considered, she would like an analysis to determine the right amount to charge and the appropriate hours for pay parking. She does not want to create negative impacts for stores and restaurants.

Responding to Mayor Lee, Mr. McDonald said the analysis has identified the potential for designating more parking spaces through striping and better configurations of the existing capacity. He described other curbside uses including loading zones, taxi stands, electric vehicle charging stations, passenger loading, bike parking, and potential special event uses.

Moving on, Mr. McDonald described issues related to transit mobility including coverage, speed, reliability, capacity, access, comfort, and public information. Current modeling indicates that Bellevue needs a five-fold increase in transit service by 2030.

Responding to Councilmember Davidson, Mr. McDonald said that expanded transit service within and around the Downtown could eliminate the need for a separate Downtown Circulator as has been discussed in the past.

Responding to Ms. Robertson, Mr. McDonald confirmed that there is mutual integration between this planning effort and the Transit Master Plan.

Mr. McDonald moved to discuss bicycle mobility. He noted a map of bicycle infrastructure within the Downtown and to and from areas outside of the Downtown.

Following brief discussion, Mayor Lee indicated that the presentation would continue during the Regular Session. He thanked the Transportation Commission for their work.

Commissioner Lampe thanked staff for all of their work and support of the Transportation Commission.

At 8:01 p.m., Mayor Lee declared recess to the Regular Session.

Myrna L. Basich, MMC
City Clerk

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