1520-ORD
5/9/2016

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CITY OF BELLEVUE, WASHINGTON

ORDINANCE NO. 6286

AN ORDINANCE of the City of Bellevue, Washington, adopting interim official zoning controls regulating recreational marijuana retailers for a period of six months, to be in effect while the City drafts, considers, holds hearings and adopts permanent zoning regulations, to be effective immediately upon adoption; scheduling a hearing on the maintenance of the interim zoning ordinance; and declaring an emergency.

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 beginning November 18, 2013; 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

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 SB 5052 went into effect, which 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, in January 2016, the LCB adopted new draft regulations for public review and comment which, among other provisions, would double the number of retail marijuana outlets in urban areas, including cities such as Bellevue, based upon a report

commissioned by the LCB for the purposes of estimating the size of the medical cannabis market in the state of Washington; and

WHEREAS, the authors of the report (known as the "BOTEC Report") stated in the executive summary that "there is considerable uncertainty" in the estimates of the size of the medical cannabis market they provided to the LCB in their report due to a variety of factors, including the wide variety of responses of local jurisdictions in permitting collective gardens and/or medical cannabis dispensaries; and

WHEREAS, the BOTEC Report did not study any specific city or county with sufficient detail to be able to predict the size of the medical cannabis market or the need for additional retail outlets to serve medical patients in that city or county and in fact cautioned against overreliance on the study which the authors characterized as a "snapshot in time"; and

WHEREAS, the LCB's decision to double the number of licenses available for retail establishments in Bellevue has in no manner been correlated to a substantial need for previously unavailable medical marijuana products for residents of Bellevue; and

WHEREAS, the establishment or licensing of double the number of recreational marijuana uses 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, 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 establishment of additional recreational marijuana retailers will prevent substantial change until the land areas and the text of development standards applicable to

recreational and medical marijuana uses is reviewed, and any needed revisions are made to city codes; and

WHEREAS, the potential adverse impacts upon the public safety, welfare, and peace, as outlined herein, justify the declaration of an emergency; now therefore,

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

Section 1. Interim Regulation Adopted. Recreational marijuana retailers shall comply with the following provisions:

A. Limitations on Uses. The following limitations shall apply to all marijuana retailers in addition to all applicable existing provisions of federal, state and local regulations, including Bellevue's Land Use Code and other unless stated otherwise:
   1. A marijuana retailer shall not be located within 100 feet of the following land use districts: single family and multi-family (R-1 – R-30).

2. No more than one marijuana retailer shall be permitted within each of the following subareas: BelRed, Crossroads, Downtown, Eastgate, Wilburton, and Factoria.

Section 2. 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 3. 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 July 5, 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 4. 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.

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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. Public Emergency. The City Council hereby finds and declares that a public emergency exists and that this ordinance is a public emergency ordinance necessary for the protection of the public health and safety and should, therefore, take effect upon adoption. The facts upon which this public emergency is based include all recitals set out in this ordinance as well as those facts contained in the legislative record.

Section 7. Effective Date. In accordance with RCW 35A.13.190, this ordinance, as a public emergency ordinance, shall take effect and be in force immediately upon adoption by a majority plus one of the City Council.

Passed by the City Council this 9th day of May, 2016 and signed in authentication of its passage this 10th day of May, 2016.

(SEAL)

John Stokes, Mayor

Approved as to form:
Lori M Riordan, City Attorney

Robert A. Hyde, Deputy City Attorney

Attest:

Kyle Stannert, City Clerk

Published May 12, 2016.