

CITY COUNCIL STUDY SESSSION ITEM

SUBJECT

Planning Commission Recommendation on Medical Cannabis Collective Garden Land Use Code Amendments.

STAFF CONTACTS

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POLICY ISSUES

Should the City amend the Bellevue Land Use Code (LUC) to allow and regulate medical cannabis collective gardens in the General Commercial, Bel-Red General Commercial, and the Light Industrial Land Use Districts?

DIRECTION NEEDED FROM COUNCIL

- Action
- Discussion
- Information

After review and discussion at this Study Session, staff requests Council direction to bring the amendments forward for action at the October 21, 2013 regular meeting.

BACKGROUND/ANALYSIS

During the May 7, 2012 Regular Session, Council responded to the uncertainty associated with the regulation of medical cannabis collective gardens by adopting Ordinance No. 6058, implementing an interim zoning regulation regulating medical cannabis collective gardens for a period of six months, while the City addressed permanent zoning regulations. The Council has held three public hearings to adopt and extend the interim ordinance for additional six-month periods as required under the Growth Management Act. Council's goals in adopting Ordinance No. 6058 were threefold:

- (1) Allow qualified patients to have appropriate access to medical cannabis;
- (2) Preclude the establishment of collective gardens without regulations; and
- (3) Address public safety issues.

The Council directed staff to work with the Planning Commission to develop permanent regulations for medical cannabis collective gardens, using the interim ordinance as a starting point. To assist with this work, the Council approved planning principles on

February 25. These principles represent the Council's desire to prohibit locating collective gardens in residential areas and prohibit the operation of dispensaries, access points, portals, or other forms of commercial enterprises related to the cultivation, production, distribution and transportation of medical cannabis.

Based on review of the interim zoning ordinance, state law and discussion of the proposed code amendments, the Planning Commission recommends adoption of the proposed amendments to regulate medical cannabis collective gardens.

NEXT STEPS

Following Council's direction on whether to move forward with the Medical Cannabis Collective Gardens Land Use Code amendments, staff will return with the final ordinance for Council adoption on October 21, 2013.

ALTERNATIVES

1. Direct staff to prepare the recommended Planning Commission ordinance for Council adoption at the October 21, 2013 meeting; or
2. Do not proceed with the proposed code amendment and provide direction to staff.

RECOMMENDATION

Direct staff to prepare the recommended Planning Commission ordinance for Council adoption at the October 21, 2013 meeting.

ATTACHMENTS

- A. Planning Commission Transmittal with recommended Ordinance amending the Land Use Code.

AVAILABLE IN COUNCIL OFFICE

N/A



DATE: September 7, 2013
TO: Mayor Lee and Members of the City Council
FROM: Chair Tebelius and Members of the Planning Commission
SUBJECT: Medical Cannabis Collective Gardens LUCA (File No. 13-112380-AD).

With this transmittal, the Planning Commission recommends by a 4-0 vote (members Hillhorst and Laing absent, one seat vacant) that the City Council APPROVE the Medical Cannabis Collective Gardens Land Use Code Amendment (LUCA). This LUCA is recommended in response to City Council direction to process permanent regulations for medical cannabis collective gardens based on the interim regulations (Ordinance No. 6058) for collective gardens that Council adopted on May 7, 2012. A copy of the recommended ordinance is included with this memorandum as Attachment A.

The Planning Commission recognizes the recommended code amendments are necessary to provide guidance to medical cannabis patients in the City of Bellevue who desire to produce their medicine collectively, while addressing the impacts related to the cultivation of medical cannabis. In reaching its recommendation, the Commission also considered the public comments, both written and oral, and the Council's direction provided in the adopted planning principles.

During its deliberations, the Planning Commission considered the feasibility and compatibility of the four land use districts in the interim zoning control: General Commercial, Light Industrial, Bel-Red General Commercial, and Medical Institution. Concerns were raised related to the Medical Institution (MI) land use district, based on the limited number of properties within the MI. As a result of the Planning Commission's deliberations, two changes were made to the recommended LUCA. The first change identifies in the applicability section of the new general requirements for collective gardens (LUC 20.20.526) each of the individual land use districts where medical cannabis collective gardens would be allowed under the applicability section. The second change eliminates the MI land use district as a location for collective gardens.

BACKGROUND

Regulation of Medical Cannabis and Marijuana in Washington

Federal and Washington law prohibit the production, processing, and dispensing of medical cannabis or medical cannabis products under the respective state and federal controlled substances acts.¹ In 1998, however, Governor Locke signed into law the Medical Cannabis Act (the "Act"), approving the limited use of medical cannabis by

¹ 21 U.S.C. 801 et. seq.; Chapter 69.50 RCW.

patients with qualifying medical conditions.² The Act allows qualified patients to either grow their own cannabis or to designate a provider to grow the cannabis for them. The Act also limits the quantity of medical cannabis a patient may possess.

Allowing the limited possession, use, and ability to cultivate medical cannabis created an inconsistency among the Act and the state and federal controlled substances acts. In an attempt to clarify that inconsistency, the legislature in 2011 passed ESSB 5073. This bill, in relevant part, authorized medical cannabis dispensaries and allowed qualifying patients to participate in collective gardens to grow cannabis for medical use. The bill also authorized cities to regulate and license the production, processing, or dispensing of medical cannabis and its products within their jurisdiction.

Governor Gregoire signed the bill, but vetoed several portions related to dispensaries, and state licensing and registration requirements. The veto created inconsistency and uncertainty in the administration and enforcement of portions of the bill that were not vetoed and the existing Act; specifically, the operation and regulation of medical cannabis collective gardens. The Governor also expressed reservations about provisions that could place government employees in a position to be held responsible for violation of federal law during the discharge of their work duties. While clarifying legislation was introduced in the 2012 legislative session, it was not adopted. During this legislative session which adjourned on April 28, the legislature considered, but did not adopt amendments to the Medical Cannabis Act (Ch. 69.51A RCW). The legislature returned on May 13 for the 1st Special Session to discuss the state budget and other issues, but took no action regarding medical cannabis during the Special Session.

City Council's Response to Uncertainty Associated with Medical Cannabis

During the May 7, 2012 Regular Session, Council responded to the uncertainty associated with the regulation of medical cannabis collective gardens by adopting Ordinance No. 6058, implementing an interim zoning regulation regulating medical cannabis collective gardens for a period of six months, while the City addressed permanent zoning regulations. Council's goals in adopting Ordinance No. 6058 were threefold:

- (1) Allow qualified patients to have appropriate access to medical cannabis;
- (2) Preclude the establishment of collective gardens without regulations; and
- (3) Address public safety issues.

The Council directed staff to add the permanent regulations for collective gardens to the code amendment work plan. Consistent with the Growth Management Act (GMA), provisions for interim regulations, the Council has twice extended the interim regulations for six month periods to allow staff to study the issues and begin working on code

² Chapter 69.51A RCW (formerly the Medical Marijuana Act).

amendments.³ To date, the Council has held three public hearings on the interim zoning regulation (July 2, 2012, October 22, 2012, and April 15, 2013).

Initiative 502

Last November, Washington voters approved I-502 legalizing the possession of limited amounts of marijuana. According to King County election data, 59% percent of Bellevue voters voted in favor of I-502. I-502 took effect on December 6, 2012; however, it does not amend or repeal Washington's Medical Cannabis Act (Ch. 69.51A RCW). Under I-502, the Washington State Liquor Control Board (LCB) is authorized to license and regulate the cultivation, production, and retail sales of recreational marijuana, and is undertaking rulemaking required under I-502. Initially, the LCB anticipated it would begin accepting applications for licenses for growers, producers, and retailers in mid-September. Because the LCB filed revised rules in September, the agency now anticipates it will begin accepting applications for licenses in mid-November and will begin issuing licenses in December.

Federal Response to State Regulation of Marijuana

On August 29, 2013, the United States Department of Justice, Office of the Attorney General, ("DOJ") released updated guidance regarding marijuana enforcement. According to DOJ, the guidance was updated in response to state ballot initiatives, such as I-502, which legalize the possession of small amounts of marijuana and regulate the production, processing, and sale of marijuana. The guidance reiterates that DOJ is committed to using its 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 in cases to determine whether the conduct at issue implicates one or more of the eight stated federal enforcement priorities set forth in the guidance. The DOJ guidance rests on expectations that state and local governments implement a strong and effective regulatory system. The DOJ guidance appears to not differentiate its application of the guidance between medical cannabis and recreational marijuana. A copy of the DOJ's August 29 guidance is included with this memorandum as Attachment B.

II. PROPOSAL

The interim zoning regulation (Ordinance No. 6058) is the basis for the recommended LUCA. The recommendation embodies the project principles that Council approved on February 25, 2013. The principles represent 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. A copy of the Council-approved project principles is included as Attachment C to this

³ Ordinances numbers 6079 and 6109.

recommendation. The recommended LUCA also includes Bellevue-appropriate performance standards consistent with the project principles. These performance standards include separation requirements from other uses, limitations on the number of collective gardens allowed per parcel, and operational standards. Business licensing requirements are not part of the LUCA.

The recommendation includes new general requirements for medical cannabis collective gardens (LUC 20.20.526) and amends the Land Use Code as follows:

1. Land Use Charts. The recommended LUCA will amend the General and Bel-Red resource land use charts to add a new land use classification: 8192 – Other Horticultural Specialties: Medical Cannabis Collective Gardens. Consistent with the Planning Commission’s direction, medical cannabis collective gardens will not be allowed in the Medical Institution district. The recommendation also includes a new footnote to each chart directing users to the new LUC 20.20.526, requirements for medical cannabis collective gardens.
2. General Requirements: LUC 20.20.526, Medical Cannabis Collective Gardens. LUC 20.20.526 is a new section that describes code applicability, the purpose for the provisions, submittal and permit requirements, and development requirements and performance standards. A summary of the provisions of LUC 20.20.526 follows:
 - Purpose (LUC 20.20.526.A). The purpose section describes the intent of the regulations to minimize impacts of collective gardens on surrounding properties and protecting the public health, safety, and welfare.
 - Applicability. Consistent with Planning Commission direction, the applicability section identifies the three land use districts where medical cannabis collective gardens are allowed.
 - Submittal Requirements (LUC 20.20.526.C). The submittal requirements section specifies who may apply for a medical cannabis collective garden, and that the submittal must include information demonstrating the proposed location will meet separation requirements.
 - Required Review (LUC 20.20.526.D). The required review section specifies that an administrative conditional use permit is required to operate a medical cannabis collective garden.
 - Definitions (LUC 20.20.526.E). The definition section contains definitions specific to medical cannabis collective gardens and incorporates by reference definitions found in the state Medical Cannabis Act (Chapter 69.51A RCW).
 - Requirements Applicable to Medical Cannabis Collective Gardens (LUC 20.20.526.F). The requirements section sets forth limitations on the number of collective gardens on a tax lot and the 1,000-foot separation requirement from certain uses; requires collective gardens to be located in a structure; sets forth requirements for ancillary uses; and incorporates limits on the number of plants and the amount of cannabis allowed at a

collective garden. This provision also provides limits on the number of participating qualifying patients, required patient documentation, and limits on transferring membership between collective gardens. Finally, the provision addresses the transportation or delivery of medical cannabis and requires appropriate security systems.

- Release and Hold Harmless (LUC 20.20.526.G). Requires the permittee of a medical cannabis collective garden to provide a written release of liability and agreement to hold the City harmless from any liabilities or damages arising from operation of the collective garden, specifically those related to arrest, seizure of property, or any claims by third parties relating to the operation of the collective garden.
- Conflicts (LUC 20.20.526.H). The conflicts section specifies that in the event of a conflict between the state's collective gardens provisions and LUC 20.20.526, the most restrictive provision shall apply.

III. STATE ENVIRONMENTAL POLICY ACT (SEPA)

The Environmental Coordinator for the City of Bellevue has determined that this proposal is not likely to result in any probable, significant, adverse environmental impacts. A threshold Determination of Nonsignificance (DNS) was issued on July 3, 2013. The threshold determination is included in the project file, which will be available for review in the Council office.

IV. PUBLIC NOTICE, PARTICIPATION, COMMENT AND RESPONSE

The Medical Cannabis Collective Garden LUCA was introduced to the Planning Commission at the study session held on May 8, 2013. A subsequent study session was on collective gardens was held on May 22, during which the Planning Commission directed staff to proceed to a public hearing on the proposed amendment. The Notice of Decision, Recommendation, and Public Hearing was published on July 3 in the Weekly Permit Bulletin. The public hearing was held before the Planning Commission on July 24, 2013. Deputy Mayor Robertson attended the public hearing and participated in the discussion about medical cannabis collective gardens.

Several members of the public attended the public hearing and commented. Several commentators recommended that collective gardens be allowed in other land use districts throughout the City, including residential zones. Staff responded that land use districts were recommended based on compatibility of collective gardens with the underlying allowed uses for each district. Deputy Mayor Robertson explained that the City Council desired to not locate collective gardens in residential land use districts because of the documented operational impacts related to security, odor, and power requirements. Comments were also raised regarding the City's authority to implement

zoning regulations for collective gardens. Staff confirmed that both the interim regulation and the proposed LUCA were discussed with the City Attorney's office that confirmed that the City was not preempted under state law from exercising its zoning authority. Staff also clarified that the proposed LUCA does not prohibit the use of medical cannabis in the city or a patient's ability to grow cannabis in their residence in accordance with state law. The Planning Commission also received comments regarding enforcement responsibilities. Staff explained that all Land Use Code provisions are enforced by the City's code enforcement officers; however, code enforcement would investigate only if the City received a complaint. If a code enforcement officer found operations at a collective garden exceeding operations allowed under state law, then it would become a law enforcement issue.

A courtesy public hearing on the proposal was held with the East Bellevue Community Council (EBCC) on July 2, 2013. No public comments were received. One EBCC Commissioner expressed concern that the proposed LUCA was too restrictive and would be difficult for patients to implement.

Pursuant to the requirements of the Growth Management Act, state agencies must be given an opportunity to review and comment on the recommended amendment to the LUC. Copies of the draft ordinance were provided to the state agencies for review on June April 2, 2013. The City supplemented its submittal on June 26, 2013. The City received notification from the Washington State Department of Commerce on April 3 and July 1, 2013, confirming that the notice requirements in RCW 36.70A.106 had been met.

V. APPLICABLE DECISION CRITERIA – LAND USE CODE PART 20.30J

The Planning Commission may recommend and the City Council may approve or approve with modifications an amendment to the text of the Land Use Code if:

A. The amendment is in accord with the Comprehensive Plan; and

The recommended amendment is consistent with the Comprehensive Plan, including the Land Use, Housing, and Human Services policies listed below. The recommended LUCA would provide a mechanism that mitigates impacts related to a collective garden, while allowing qualified patients to obtain medical cannabis.

Land Use Element

Policy LU-9. Maintain stability and improve the vitality of residential neighborhoods through adherence to, and enforcement of, the city's land use regulations.

Policy LU-22. Protect residential areas from the impacts of non-residential uses of a scale not appropriate to the neighborhood.

Policy HO-8. Protect residential areas from illegal land use activities through enforcement of city codes.

Policy HS-3. Assess local human services needs and promote community awareness of needs and resources available to meet them.

Policy HS-13. Encourage services to become accessible to all in the community by removing any barriers, including but not limited to architectural, cultural, language, communication, or location.

B. The amendment bears a substantial relationship to the public health, safety or welfare; and

The recommended amendment protects the public health and safety of the public by protecting neighborhoods from the unintended impacts related to the cultivation of medical cannabis while allowing qualified patients access to medical cannabis.

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

The recommended amendment is in the best interest of Bellevue citizens as it will create consistent, clear regulations and permitting requirements for medical cannabis collective gardens in Bellevue and mitigating operational impacts associated with collective gardens.

VI. RECOMMENDATION

The Planning Commission recommends by a 4-0 vote that the City Council APPROVE the Medical Cannabis Collective Garden LUCA as drafted in Attachment A. This amendment is recommended in response to City Council direction to process permanent regulations for medical cannabis collective gardens based on the interim regulations (Ordinance No. 6058) for collective gardens that Council adopted on May 7, 2012.

The Planning Commission appreciates the opportunity to review the Medical Cannabis Collective Garden LUCA, and the Chair will be available at the Council meeting to answer any questions regarding the recommendation that the City Council may have.

ATTACHMENTS

- A. Draft Ordinance Regulating Medical Cannabis Collective Gardens
- B. Memorandum for all United States Attorneys, from James M. Cole, Deputy Attorney General, Subject: Guidance Regarding Marijuana Enforcement, August 29, 2013.
- C. Council Approved Project Principles

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20.10.440 Land use charts.
 Chart 20.10.440

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	P1	P1	P1	P1	P1	P1	P1	P1	P1
<u>8192</u>	<u>Other Horticultural Specialties: Medical Cannabis Collective Gardens</u>											
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	P 1	P 1	P 1	P 1	P 1	P 1	P 1	P 1	P 1	P 1
8192	<u>Other Horticultural Specialties: Medical Cannabis Collective Gardens</u>				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						
<u>8192</u>	<u>Other Horticultural Specialties; Medical Cannabis Collective Gardens</u>						
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.

. . . .

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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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.

. . . .

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

STD LAND USE CODE REF	LAND USE CLASSIFICATION	Resources – Bel Red Districts						
		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	<u>Other Horticultural Specialties:</u> <u>Medical Cannabis.</u> <u>Collective Gardens</u>					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							

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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.

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:

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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.

1. "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.

Comment [CoB1]: Based on the Uniform Controlled Substances Act, RCW 69.50.101 as revised by SSB 5416, Chapter 276, Laws of 2013.

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or not meeting the requirements of this section shall not be considered a collective garden and is prohibited;

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

Comment [CoB2]: Based on the Uniform Controlled Substances Act, RCW 69.50.101

4. "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.

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, or any other collective garden;
3. Required separation distances shall be measured by taking a straight horizontal line, measured from the nearest point of that portion of a lot proposed be used for a collective garden (the enclosed building or indoor leased space, excluding for example, parking areas, landscaping or tenant common areas) to the nearest point of:
 - a. That portion of a lot used for another collective garden; or
 - b. A lot owned or leased, or that portion of a lot leased (excluding common areas) for 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, and community centers;
4. A collective garden shall be located in a structure;

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5. A collective garden may include ancillary uses for processing and delivering medical cannabis to its members; provided:
 - c. The ancillary use shall be located on the same lot and in the same structure as the collective garden; and
 - d. The total size allowed for ancillary processing and distribution necessary to support the collective garden shall not exceed more than 10 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 can be viewed or smelled, in the discretion of the director, from a public place or way open to the public;
7. No more than 10 qualifying patients may participate in a single collective garden at any time;
8. A collective garden may contain no more than fifteen plants per qualifying patient up to a total of 45 plants;
9. 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;
10. 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;
11. 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;
12. 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;
13. Any transportation or delivery of medical cannabis from the collective garden shall be conducted by the collective members or designated provider so that

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quantities of medical cannabis allowed by RCW 69.51A.085, now or as hereafter amended, are never exceeded; and

14. A collective garden shall have installed an operational security alarm system that is monitored 24-hours a day and an operational security camera system that retains recordings from all installed cameras for a period not less than 60 days.

G. Release of Liability and Hold Harmless.

The permittee of a medical cannabis collective garden shall provide an executed release in a form 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 from 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.



U.S. Department of Justice


Office of the Deputy Attorney General

The Deputy Attorney General

Washington, D.C. 20530

August 29, 2013

MEMORANDUM FOR ALL UNITED STATES ATTORNEYS

FROM: James M. Cole 
Deputy Attorney General

SUBJECT: Guidance Regarding Marijuana Enforcement

In October 2009 and June 2011, the Department issued guidance to federal prosecutors concerning marijuana enforcement under the Controlled Substances Act (CSA). This memorandum updates that guidance in light of state ballot initiatives that legalize under state law the possession of small amounts of marijuana and provide for the regulation of marijuana production, processing, and sale. The guidance set forth herein applies to all federal enforcement activity, including civil enforcement and criminal investigations and prosecutions, concerning marijuana in all states.

As the Department noted in its previous guidance, Congress has determined that marijuana is a dangerous drug and that the illegal distribution and sale of marijuana is a serious crime that provides a significant source of revenue to large-scale criminal enterprises, gangs, and cartels. The Department of Justice is committed to enforcement of the CSA consistent with those determinations. The Department is also committed to using its limited investigative and prosecutorial resources to address the most significant threats in the most effective, consistent, and rational way. In furtherance of those objectives, as several states enacted laws relating to the use of marijuana for medical purposes, the Department in recent years has focused its efforts on certain enforcement priorities that are particularly important to the federal government:

- Preventing the distribution of marijuana to minors;
- Preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels;
- Preventing the diversion of marijuana from states where it is legal under state law in some form to other states;
- Preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity;

- Preventing violence and the use of firearms in the cultivation and distribution of marijuana;
- Preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use;
- Preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and
- Preventing marijuana possession or use on federal property.

These priorities will continue to guide the Department's enforcement of the CSA against marijuana-related conduct. Thus, this memorandum serves as guidance to Department attorneys and law enforcement to focus their enforcement resources and efforts, including prosecution, on persons or organizations whose conduct interferes with any one or more of these priorities, regardless of state law.¹

Outside of these enforcement priorities, the federal government has traditionally relied on states and local law enforcement agencies to address marijuana activity through enforcement of their own narcotics laws. For example, the Department of Justice has not historically devoted resources to prosecuting individuals whose conduct is limited to possession of small amounts of marijuana for personal use on private property. Instead, the Department has left such lower-level or localized activity to state and local authorities and has stepped in to enforce the CSA only when the use, possession, cultivation, or distribution of marijuana has threatened to cause one of the harms identified above.

The enactment of state laws that endeavor to authorize marijuana production, distribution, and possession by establishing a regulatory scheme for these purposes affects this traditional joint federal-state approach to narcotics enforcement. The Department's guidance in this memorandum rests on its expectation that states and local governments that have enacted laws authorizing marijuana-related conduct will implement strong and effective regulatory and enforcement systems that will address the threat those state laws could pose to public safety, public health, and other law enforcement interests. A system adequate to that task must not only contain robust controls and procedures on paper; it must also be effective in practice. Jurisdictions that have implemented systems that provide for regulation of marijuana activity

¹ These enforcement priorities are listed in general terms; each encompasses a variety of conduct that may merit civil or criminal enforcement of the CSA. By way of example only, the Department's interest in preventing the distribution of marijuana to minors would call for enforcement not just when an individual or entity sells or transfers marijuana to a minor, but also when marijuana trafficking takes place near an area associated with minors; when marijuana or marijuana-infused products are marketed in a manner to appeal to minors; or when marijuana is being diverted, directly or indirectly, and purposefully or otherwise, to minors.

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.

In jurisdictions that have enacted laws legalizing marijuana in some form and that have also implemented strong and effective regulatory and enforcement systems to control the cultivation, distribution, sale, and possession of marijuana, conduct in compliance with those laws and regulations is less likely to threaten the federal priorities set forth above. Indeed, a robust system may affirmatively address those priorities by, for example, implementing effective measures to prevent diversion of marijuana outside of the regulated system and to other states, prohibiting access to marijuana by minors, and replacing an illicit marijuana trade that funds criminal enterprises with a tightly regulated market in which revenues are tracked and accounted for. In those circumstances, consistent with the traditional allocation of federal-state efforts in this area, enforcement of state law by state and local law enforcement and regulatory bodies should remain the primary means of addressing marijuana-related activity. If state enforcement efforts are not sufficiently robust to protect against the harms set forth above, the federal government may seek to challenge the regulatory structure itself in addition to continuing to bring individual enforcement actions, including criminal prosecutions, focused on those harms.

The Department's previous memoranda specifically addressed the exercise of prosecutorial discretion in states with laws authorizing marijuana cultivation and distribution for medical use. In those contexts, the Department advised that it likely was not an efficient use of federal resources to focus enforcement efforts on seriously ill individuals, or on their individual caregivers. In doing so, the previous guidance drew a distinction between the seriously ill and their caregivers, on the one hand, and large-scale, for-profit commercial enterprises, on the other, and advised that the latter continued to be appropriate targets for federal enforcement and prosecution. 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.

As explained above, however, both the existence of a strong and effective state regulatory system, and an operation's compliance with such a system, may allay the threat that an operation's size poses to federal enforcement interests. Accordingly, in exercising prosecutorial discretion, prosecutors should not consider the size or commercial nature of a marijuana operation alone as a proxy for assessing whether marijuana trafficking implicates the Department's enforcement priorities listed above. Rather, prosecutors should continue to review marijuana cases on a case-by-case basis and weigh all available information and evidence, including, but not limited to, whether the operation is demonstrably in compliance with a strong and effective state regulatory system. A marijuana operation's large scale or for-profit nature may be a relevant consideration for assessing the extent to which it undermines a particular federal enforcement priority. The primary question in all cases – and in all jurisdictions – should be whether the conduct at issue implicates one or more of the enforcement priorities listed above.

As with the Department's previous statements on this subject, this memorandum is intended solely as a guide to the exercise of investigative and prosecutorial discretion. This memorandum does not alter in any way the Department's authority to enforce federal law, including federal laws relating to marijuana, regardless of state law. Neither the guidance herein nor any state or local law provides a legal defense to a violation of federal law, including any civil or criminal violation of the CSA. Even in jurisdictions with strong and effective regulatory systems, evidence that particular conduct threatens federal priorities will subject that person or entity to federal enforcement action, based on the circumstances. This memorandum is not intended to, does not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter civil or criminal. It applies prospectively to the exercise of prosecutorial discretion in future cases and does not provide defendants or subjects of enforcement action with a basis for reconsideration of any pending civil action or criminal prosecution. Finally, nothing herein precludes investigation or prosecution, even in the absence of any one of the factors listed above, in particular circumstances where investigation and prosecution otherwise serves an important federal interest.

cc: Mythili Raman
Acting Assistant Attorney General, Criminal Division

Loretta E. Lynch
United States Attorney
Eastern District of New York
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**Project Principles for the
Regulation of Medical Cannabis Collective Gardens
Approved by the Bellevue City Council on February 25, 2013**

The project principles described below apply only to the regulation of medical cannabis collective gardens as permitted under Chapter 69.51A RCW, and do not apply to the recreational use of marijuana approved by the voters on November 6, 2012 with the passage of Initiative 502. The Planning Commission will provide a recommendation to the Bellevue City Council concerning only the regulation of medical cannabis collective gardens.

1. Bellevue Appropriate. In Bellevue, collective gardens are limited to actual gardens that allow small groups of qualified patients to join together to assist each other in growing, harvesting, processing, and distributing medical cannabis among members of the collective garden, consistent with RCW 69.51A.080, now or as hereafter amended.
2. Collective Gardens are Gardens. Commercial enterprises for the distribution of medical cannabis, including but not limited to access points, portals, or dispensaries, are prohibited under federal and state law, and therefore are prohibited in Bellevue. These commercial enterprises are inconsistent with Bellevue's desire to balance the need for medical cannabis patients to have access to their medicine with Bellevue's values and community standards, including the protection of neighborhoods.
3. Neighborhood Character is Protected. Collective gardens shall not be located in residential land use districts or transitional land use zones that abut residential land use districts. Collective gardens shall be separated from schools, child care services, residential treatment facilities, youth-oriented facilities, such as Youth Eastside Services, by a distance of 1,000 feet, consistent with state and/or federal law. A waiting period should be required when a qualifying patient desires to participate in a different collective garden.
4. Regulations are Specific and Understandable. The permanent regulations should be specific about the requirements to locate and operate medical cannabis collective gardens so that qualifying patients understand what is expected under the regulation.
5. Administration and Enforcement is Straightforward. Ensure regulations are capable of being administered and enforced. Collective gardens should register with the City's Development Services Department. Development Services and the Bellevue police department should collaborate in matters of enforcement. Consider using the City's authority to define and abate nuisances to prohibit

conduct or activities relating to medical cannabis collective gardens or other medical cannabis commercial enterprises.

6. Security Measures are Required. Collective gardens must have sufficient security measures to protect both the participating patients and the public. Collective gardens are responsible to ensure that members have safe access to their medicine. Medical cannabis plants or finished products should not be visible outside of the collective garden. Collective gardens should include security measures appropriate for the surrounding neighborhood.
7. Processing of the Amendment is Inclusive. The code amendment process for medical cannabis should seek and include input from a wide range of stakeholders.
8. The Outcome is in Conformance with Applicable Law. The establishment and operation of medical cannabis collective gardens must conform with, and not frustrate, the purpose of state law. Collective gardens must conform to the requirements of RCW 69.51A.085, now or as hereafter amended.
9. The Amendment is Narrowly Tailored to Regulate Only Collective Gardens. Regulations for medical cannabis collective gardens should not create the presumption that the Bellevue City Council is regulating the recreational use of marijuana as approved under I-502. Furthermore, the adoption of the regulations for medical cannabis collective gardens is not intended to limit the Bellevue City Council's right to comment on any proposal to effectuate I-502, whether by federal or state entities or local stakeholders, nor should it be construed as a limitation on the Bellevue City's Council's authority in the future to adopt regulatory controls on the sale of recreational marijuana products following the adoption of rules by the Washington State Liquor Control Board.