

**ORDINANCE NO. 2016-017**

**AN ORDINANCE** relating to land use and zoning, amending Yakima Municipal Code Section 15.09.220 to add “Family Home Child Care Centers” to the definition of “Child Care Centers” for purposes of buffered uses.

**WHEREAS**, in November of 2012, the Washington voters passed I-502, which directed the Washington State Liquor Control Board (now Liquor and Cannabis Board—both collectively referred to as “LCB”) to regulate recreational marijuana by licensing and taxing recreational marijuana producers, processors and retailers; and

**WHEREAS**, the LCB has adopted since I-502’s effective date, numerous rules and a regulatory scheme to address the methods of producing, processing and packaging of recreational marijuana, security requirements for retail outlets, retail outlet locations and hours of operation, labeling requirements and methods of transport of product throughout the state, taxing, license fees, penalties and other necessary regulations for marijuana related businesses; and

**WHEREAS**, on January 17, 2012, the City Council of the City of Yakima enacted Ordinance No. 2012-003, which provided that no use that is illegal under local, state or federal law shall be allowed in any zone of the city, and applying such regulation to medical marijuana dispensaries and collective gardens; and

**WHEREAS**, on October 8, 2013, the City Council of the City of Yakima enacted Ordinance No. 2013-048, which adopted and imposed a moratorium on the production, processing and retail sales of marijuana within the City of Yakima; and

**WHEREAS**, on January 21, 2014, the City Council of the City of Yakima enacted Ordinance No. 2014-001, which prohibited the production, processing and/or retail outlets and sales of marijuana in all zones of the city, and terminated the moratorium imposed on October 8, 2013; and

**WHEREAS**, in 2015, the Washington State Legislature combined the medical marijuana and recreational marijuana systems into one recreational marijuana system, added neighborhood cooperatives, and banned collective gardens in 2E2SHB 2136; and,

**WHEREAS**, on May 17, 2016, the City Council of the City of Yakima voted in favor of repealing the ban on recreational marijuana producing, processing and distributing in Yakima and sent the zoning issues to the Planning Commission for review through the Planning Commission procedures and to provide a recommendation within 90 days to Council; and

**WHEREAS**, the Planning Commission held and conducted an open record public hearing on June 16, 2016, with special meetings on June 1, 2016, June 8, 2016 and June 16, 2016, all pursuant to required notice and applicable procedures of the City of Yakima, and has adopted findings of fact and conclusions of law in support of its recommendation for adoption of zoning provisions outlined herein, which Findings of Fact and Conclusions of Law are of record and incorporated herein by reference; and

**WHEREAS**, the City Council has held and conducted a public hearing on July 5, 2016, and considered the recommendation of the Planning Commission, the record herein, and all evidence and testimony presented;

**WHEREAS**, the City Council adopted Ordinance 2016-008 on July 5, 2016, which outlined the regulations for marijuana producers, processors, researchers and retailers in the City of Yakima, and that ordinance became effective on or about August 8, 2016;

**WHEREAS**, on August 16, 2016, Councilmember Cousens requested that two issues regarding marijuana regulation be placed back in front of the Council: whether to include in home family day cares as child care centers under the ordinance; and whether to add the Small Convenience Center to the list of approved zones for marijuana retailers;

**WHEREAS**, the City Council, on September 6, 2016, set two public hearings: one regarding adding the family home day care centers to the definition of "child care centers" which would result in a 1,000 foot buffer between family home day cares licensed by the Department of Early Learning and a marijuana entity; and one regarding adding the Small Convenience Center to the list of approved zones for marijuana retailers;

**WHEREAS**, on September 20, 2016, after proper notice was provided, the City Council held a public hearing and took public comment on whether to amend the zoning code to add family home child care centers to the definition of "child care center" found in the ordinance, thus including licensed family home child care centers to the list of uses buffered 1,000 feet from marijuana businesses;

**WHEREAS**, the City Council of the City of Yakima hereby makes the following Findings of Fact to supplement those made by the Planning Commission:

#### FINDINGS OF FACT

Family Home Child Care centers should be added to the definition of "child care centers" which will provide for a 1,000 foot buffer.

1. Children should be protected as they are traveling to and from day care, whether it be child care centers or family home (or in-home) child care centers.
2. The buffer between family home child care centers and marijuana businesses should be 1,000 feet, not something less, which is also consistent with the buffer distances for other protected uses under the ordinance.
3. Children should be protected on the same basis as was outlined by the Planning Commission in its findings of fact, but further protections should be provided to the family home child care centers.
4. Amending the code to add family home child care centers will make sure that all childcare centers licensed under WAC 170-295 and WAC 170-296A are in regulation with what the Planning Commission originally recommended to the City Council.

**WHEREAS**, the City Council makes the foregoing findings of fact, and determines that approval of such amendments is in the best interests of the residents of the City of Yakima and will promote the general health, safety and welfare; now, therefore

**BE IT ORDAINED BY THE CITY OF YAKIMA:**

**Section 1.** Section 15.09.220 shall be added to the Yakima Municipal Code to read as follows:

15.09.220 Marijuana Uses

A. Purpose. The purpose of this section is to regulate marijuana producers, processors, researchers and retailers regulated under Chapters 69.50 and 69.51A RCW by identifying appropriate land use districts and establishing development and performance standards. Further, the purpose of this section is to regulate neighborhood cooperatives as allowed by 2E2SHB 2136, as now written or hereafter codified. Marijuana producers, processors, researchers and retailers, as well as neighborhood cooperatives, shall only be permitted in the zones outlined in the Table of Permitted Land Uses, YMC 15.04.030, and when licensed by the Washington State Liquor and Cannabis Board. The production, sale, and possession of marijuana remains illegal under the federal Controlled Substances Act. Nothing herein or as provided elsewhere shall be construed as authority to violate or circumvent federal law.

B. Definitions. The following definitions are specific to marijuana uses and shall have the following meanings:

1. "Child care center" means an entity or person that regularly provides child day care and early learning services for children and is licensed by the Washington State Department of Early Learning under Chapter 170-295 WAC (Child Care Centers) or Chapter 170-296A WAC (Family Home Child Care).

2. "Church" means a building erected for and used exclusively for religious worship and schooling or other activity connected therewith. Marijuana regulations pertaining to a "church" are found in Subsection I of this Section.

3. "Director" means the Director of the City of Yakima Community Development Director or his or her designee.

4. "Elementary School" means a school for early education that provides the first four to eight years of basic education and recognized by the Washington state superintendent of public instruction.

5. "Game Arcade" means an entertainment venue featuring primarily video games, simulators, and/or other amusement devices where persons under twenty-one years of age are not restricted.

6. "Library" means an organized collection of resources made accessible to the public for reference or borrowing supported with money derived from taxation.

7. "Marijuana" or "marihuana" means 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.

8. "Marijuana processor" means a person licensed by the state liquor and cannabis board to process marijuana into marijuana concentrates, useable marijuana, and marijuana-infused products, package and label marijuana concentrates, useable marijuana, and marijuana-infused products for sale in retail outlets, and sell marijuana concentrates, useable marijuana, and marijuana-infused products at wholesale to marijuana retailers.

9. "Marijuana producer" means a person licensed by the state liquor and cannabis board to produce and sell marijuana at wholesale to marijuana processors and other marijuana producers.

10. "Marijuana retailer" means a person licensed by the state liquor and cannabis board to sell marijuana concentrates, useable marijuana, and marijuana-infused products in a retail outlet.

11. "Marijuana researcher" means a person licensed by the state liquor and cannabis board to produce, process, and possess marijuana for the purposes of conducting research on marijuana and marijuana-derived drug products.

12. "Person" means individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity.

13. "Playground" means a public outdoor recreation area for children, usually equipped with swings, slides, and other playground equipment, owned and/or managed by a city, county, state, or federal government. Playgrounds also mean those portions of trail systems which contain playground equipment, such as those playground equipment areas on the Yakima Greenway.

14. "Public Park" means an area of land for the enjoyment of the public, having facilities for rest and/or recreation, such as a baseball diamond or basketball court, owned and/or managed by a city, county, state, federal government, or metropolitan park district. Public park does not include trails.

15. "Public Transit Center" means a facility located outside of the public right of way that is owned and managed by a transit agency or city, county, state, or federal government for the express purpose of staging people and vehicles where several bus or other transit routes converge. They serve as efficient hubs to allow bus riders from various locations to assemble at a central point to take advantage of express trips or other route to route transfers.

16. "Recreation center or facility" means a supervised center that provides a broad range of activities and events intended primarily for use by persons under twenty-one years of age, owned and/or managed by a charitable nonprofit organization, city, county, state, or federal government.

17. "Retail outlet" means a location licensed by the state liquor and cannabis board for the retail sale of marijuana concentrates, useable marijuana, and marijuana-infused products.

18. "Secondary School" means a high and/or middle school: A school for students who have completed their primary education, usually attended by children in grades seven to twelve and recognized by the Washington state superintendent of public instruction.

C. Marijuana producers, processors, researchers and retailers must comply with all requirements of Chapter 69.50 and 69.51A RCW, chapter 314-55 WAC, now or as hereafter amended, and all applicable City of Yakima ordinances, standards, and codes, including the requirement to obtain a City of Yakima business license. Applicants for a City business license shall first obtain the necessary Washington State Liquor and Cannabis Board license.

D. Limitations on Locations: Producers, Processors, Researchers and Retailers. The following limitations shall apply to all marijuana producers, processors, researchers and retailers, in addition to the limitations outlined in YMC 15.04.030, unless stated otherwise:

1. A marijuana producer, retailer, researcher or processor shall not be located within 1,000 feet of the perimeter of the grounds of the following uses, and any use included in Chapter 314-55 now or as hereafter amended:

- a. Elementary or secondary school;
- b. Playgrounds;
- c. Recreation center or facility;
- d. Child care centers;
- e. Public parks;
- f. Public transit centers;
- g. Libraries; and
- h. Any game arcade, as defined herein.

2. No marijuana producer, processor, researcher or retailer shall be allowed to locate within any residential zone of the City of Yakima.

3. All separation requirements shall be measured as the shortest straight line distance from the property line of the proposed building/business location of a marijuana producer, marijuana processor, marijuana researcher or marijuana retailer to the property line of the entities listed in subsection (D)(1) above.

E. Structure Requirements.

1. All marijuana processors, marijuana producers, marijuana researchers and marijuana retailers shall operate in a permanent structure designed to comply with the City Building Code.

2. No marijuana retailer shall operate out of a mobile structure, nor shall there be any exterior or drive-thru sales.

3. No marijuana retailer shall be located within any other business, and may only be located in buildings with other uses if the marijuana business is separated by full walls and with a separate entrance. No more than one marijuana retail business shall be located on a single parcel.

F. Neighborhood Cooperatives. Qualifying patients or designated providers may form a cooperative and share responsibility for acquiring and supplying the resources needed to produce and process marijuana only for the medical use of the members of the cooperative, pursuant to Part X: Medical Use of Marijuana of 2E2SHB 2136, and as codified in 69.51A.250 RCW. Neighborhood cooperatives shall follow all statutes, regulations and rules instituted by the legislature or Washington State Liquor and Cannabis Board, as well as the provisions outlined herein.

G. Limitations on Locations—Neighborhood Cooperatives. The following limitations shall apply to all neighborhood cooperatives:

1. A neighborhood cooperative shall not be located within 1,000 feet of the perimeter of the grounds of the following uses, and any use included in Chapter 314-55 now or as hereafter amended:

- a. Elementary or secondary school;
- b. Playgrounds;

- c. Recreation center or facility;
- d. Child care centers;
- e. Public parks;
- f. Public transit centers;
- g. Libraries; and
- h. Any game arcade, as defined herein.

2. No cooperative may be located within one mile of a marijuana retailer.

3. All neighborhood cooperatives shall be located within the domicile of one of the participants in the cooperative.

4. All separation requirements shall be measured as the shortest straight line distance from the property line of the proposed building/business location of a neighborhood cooperative to the property line of the entities listed in subsection (G)(1) and (G)(2) above.

#### H. Odor.

1. All odor shall be contained in marijuana retailers so that it cannot be detected by a person with a normal sense of smell from any abutting use or property. In the event odor is escaping the building and can be detected from abutting uses or properties, then the marijuana retailer shall be required to implement measures, including but not limited to, the installation of the ventilation equipment necessary to contain the odor.

2. All odor shall be contained in neighborhood cooperatives so that it cannot be detected by a person with a normal sense of smell from any abutting use or property. In the event odor is escaping the building and can be detected from abutting uses or properties, then the marijuana retailer shall be required to implement measures, including but not limited to, the installation of the ventilation equipment necessary to contain the odor.

3. Marijuana production, processing and researching facilities shall be ventilated so that odor from the marijuana and/or marijuana activities occurring in the facility cannot be detected by a person with a normal sense of smell from any adjoining use or property. In the event odor can be detected from any adjoining use or property, then the facility shall be required to implement measures, including but not limited to, the installation of the ventilation equipment necessary to contain the odor. If the ventilation equipment is not installed, or the odor persists, the City may choose to suspend the facility's business license until the odor issues are addressed in a manner acceptable to the City.

I. Notice. Any applicant for any marijuana producer, processor, researcher or retailer license under Chapter 69.50 RCW shall, no later than sixty (60) days prior to the issuance of its license by the Washington State Liquor and Cannabis Board, provide individual notice of the license to any elementary or secondary school, playground, recreation center or facility, child care center, church, public park, public transit center, library, or any game arcade admission to which is not restricted to persons aged twenty-one years or older, that is within 1,000 feet of the perimeter of the grounds of the establishment seeking licensure. The notice must provide the contact information for the liquor and cannabis board and where any of the owners or operators of these entities may submit comments or concerns about the proposed business location. For the purpose of this subsection, "church" means a building erected for and used exclusively for religious worship and schooling or other activity in connection therewith.

**Section 2. Severability.** If any section, sentence, clause or phrase of this Ordinance should be held to be unconstitutional, unlawful or invalid by a court of competent jurisdiction, such

invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Ordinance.

**Section 3. Effective Date.** This ordinance shall be in full force and effect 30 days after its passage, approval, and publication as provided by law and by the City Charter.

**PASSED BY THE CITY COUNCIL** signed and approved this 4<sup>th</sup> day of October, 2016.

  
Kathy Coffey, Mayor

ATTEST:

  
Sonya Claar Tee, City Clerk

Publication Date: October 7, 2016  
Effective Date: November 6, 2016

