

CITY OF YAKIMA

LEGAL

DEPARTMENT

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MEMORANDUM

June 3, 2016

TO: Planning Commission Members

FROM: Sara Watkins, Senior Assistant City Attorney

SUBJECT: Additional Details Regarding Marijuana Uses

Dear Commission Members:

A number of questions arose during the June 1, 2016 Planning Commission meeting regarding various matters concerning marijuana producers, processors and retailers. This memo addresses some of those issues, with citations to the current regulations, charts regarding other jurisdictions' actions, and other references.

1. Can the City create buffers around churches?

I found only one jurisdiction, Covington, which is considering a buffer zone of 1,000 feet around "churches, temples, synagogues, mosques or chapels." The code also allows reduction of that buffer with a conditional use permit. The planning commission report can be found here:

<http://www.covingtonwa.gov/05.05.16%20Planning%20Commission%20Agenda%20Packet.pdf>

In many jurisdictions, the notes from planning commission meetings where comments were taken indicate that commissions found that determining what constitutes a "church" or other place of worship is difficult. In Everett, churches requested to be added to the buffers in recent discussions about reducing buffer distances. The Planning Commission voted 4-2 to not add churches to the buffers. "Councilman Paul Roberts argued that from a land use perspective, it is difficult to regulate churches because the government would have to decide what counts as a church and what doesn't" while other councilmembers argued that "church" had an obvious meaning of a place where people congregate. *Everett Council Passes Permanent Marijuana Business Regs*, HeraldNet, July 5, 2015, <http://www.heraldnet.com/article/20150709/NEWS01/150709210>.

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East Wenatchee also evaluated whether to have a church buffer of some sort, and after discussion, did not move forward to add that buffer zone to its ordinance. <http://www.east-wenatchee.com/Home/ShowDocument?id=3062>

In Tacoma, the Planning Commission evaluated comments which requested a buffer for churches. The Staff comments to this concern was: “Staff note that while this is feasible, it would significantly reduce the areas available for marijuana businesses, and add to the complexity of the review process. There are many categories and types of religious institutions, and staff are not aware of a definitive listing of them.” [http://cms.cityoftacoma.org/planning/Marijuana%20Regulations/Marijuana%20PC%20Review%20Packet%20\(12-17-14\).pdf](http://cms.cityoftacoma.org/planning/Marijuana%20Regulations/Marijuana%20PC%20Review%20Packet%20(12-17-14).pdf)

A pastor in Seattle has been calling for an amendment to the state law to add churches and youth centers to the buffer requirements since 2014, but the Legislature did not adopt any changes when it recently revised the law to allow reduction in buffer requirements. See generally, http://www.breakingchristiannews.com/articles/display_art.html?ID=14734.

2. Examples of Jurisdictions, buffers and buffer distances

Below is a chart of a number of jurisdictions that have zoning ordinances in place and their buffers (i.e. are they the state buffers only, or have they added items) and buffer distances, for your review:

Jurisdiction	Buffers other than statutory items	Buffer Distance
Olympia	None	500 feet (other than playgrounds and schools)
Ellensburg	Buffer between stores	750 feet generally (other than playgrounds and schools) 500 feet between retailers
Union Gap	None	1000 feet
Prosser	None	1000 feet
Walla Walla	None	1000 feet
East Wenatchee	None	1000 feet
Moses Lake	None	1000 feet
Shelton	Buffer between stores	500 feet (other than playgrounds and schools) 1000 feet between retailers
George	None	100 feet (other than playgrounds and schools)
Electric City	None	100 feet (other than

		playgrounds and schools)
Seattle	Buffer between stores	<p>1000 feet for playgrounds and schools</p> <p>Any lot line of property having a major marijuana activity that includes the retail sale of marijuana products, except that in Downtown Mixed Residential and Downtown Mixed Commercial zones within that portion of the Downtown Urban Center that is west of Interstate 5, north of Yesler Way, and south of Denny Way major marijuana activity that includes the retail sale of marijuana products must be 250 feet or more, must be 500 feet or more from any lot line of property on which any of the following uses as defined in WAC 314-55-010 is established and operating: child care center; game arcade; library; public park; public transit center; or recreation center or facility;</p> <p>Any lot line of property having a major marijuana activity that does not include the retail sale of marijuana products must be 250 feet or more from any lot line of property on which any of the following uses as defined in WAC 314-55-010 is established and operating: child care center; game</p>

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		<p>arcade; library; public park; public transit center; or recreation center or facility;</p> <p>No more than two properties with major marijuana activity that includes the retail sale of marijuana products are allowed within 1000 feet of each other; where any lot lines of two properties with existing major marijuana activity that includes the retail sale of marijuana products are located within 1000 feet of each other, any lot line of another property with a new major marijuana activity that includes the retail sale of marijuana products must be 1000 feet or more from the closest lot line of the property containing existing major marijuana activity that includes the retail sale of marijuana products;</p>
Kirkland (at Planning Commission Review Level)	May not be located on any property abutting a street designated as a School Walk Route	<p>1000 feet</p> <p>100 feet for day cares</p>
Pullman (at Planning Commission Review Level)	None	<p>Considering 500 feet for daycares; 100 feet for others (other than playgrounds and schools)</p>
Issaquah (at Planning Commission Review Level)	Buffer between stores	<p>1000 feet playgrounds/schools</p> <p>500 feet rec centers, daycares, parks, libraries, arcades</p>

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		100 feet transit centers 1000 feet between retailers
Tacoma (at Planning Commission Review Level)	Correctional centers, court houses, drug rehab centers; buffers between retailers in downtown and outside downtown	1000 feet playgrounds/schools 300 feet correctional centers, courthouses, drug rehab centers 100 feet daycares, arcades, libraries, parks, transit 300 feet from each other downtown 500 feet from each other outside downtown

Jurisdictions have also created buffers from residential zones in various distances. Some also have created regulations that do not allow marijuana uses on lots adjacent to properties used for residential purposes. As was discussed in the last commission meeting, there are areas where this would create difficulties. There is an opportunity to evaluate a different review of individual applicants (i.e. Type 1, 2 or 3), if an applicant wishes to locate adjacent to a residential property if the commission wishes.

3. Notice Requirements

Notice requirements for retailers, producers and processors who are seeking a license were briefly discussed at the June 1st meeting. The Notice requirements for marijuana licenses are outlined in WAC 314-55-020, and only require notice to local governments, cities, counties and tribal governments. A sign must also be posted on the outside of the premises to be licensed notifying the public. There is no requirement to notify adjacent landowners or landowners within a certain area of the license application or ability to comment on the application.

Under the new Legislation: "A city, town, or county may adopt an ordinance requiring individual notice by an applicant for a marijuana producer's, marijuana processor's, marijuana researcher's, or marijuana retailer's license under this chapter, sixty days prior to issuance 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 one thousand 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 where any of the owners or operators of these entities may submit comments or concerns about the proposed business location. For the purposes of this subsection, "church" means a building erected for and used exclusively for religious worship and schooling or other activity in connection therewith."

4. Restrictions on Hours

Pursuant to law, marijuana retailers may only conduct sales from the hours of 8:00 a.m. to 12:00 a.m. WAC 314-55-147. A couple of jurisdictions have further limited the sale of marijuana, the most restrictive of which limited the hours of sales to 8:00 a.m. to 9:00 p.m.

5. General Rules and Regulations

The general rules and regulations outlined in WAC 314-55-015 apply to all license holders. Some of the general rules address questions and concerns that were raised at our previous meeting.

314-55-015

General information about marijuana licenses.

(1) A person or entity must meet certain qualifications to receive a marijuana license, which are continuing qualifications in order to maintain the license.

(2) All applicants and employees working in each licensed establishment must be at least twenty-one years of age.

(3) Minors restricted signs must be posted at all marijuana licensed premises.

(4) A marijuana license applicant may not exercise any of the privileges of a marijuana license until the board approves the license application.

(5) The board will not approve any marijuana license for a location where law enforcement access, without notice or cause, is limited. This includes a personal residence.

(6) The board will not approve any marijuana license for a location on federal lands.

(7) The board will not approve any marijuana retailer license for a location within another business. More than one license could be located in the same building if each licensee has their own area separated by full walls with their own entrance. Product may not be commingled.

(8) Every marijuana licensee must post and keep posted its license, or licenses, and any additional correspondence containing conditions and restrictions imposed by the board in a conspicuous place on the premises.

(9) In approving a marijuana license, the board reserves the right to impose special conditions as to the involvement in the operations of the licensed business of any former licensees, their former employees, or any person who does not qualify for a marijuana license.

(10) A marijuana processor or retailer licensed by the board shall conduct the processing, storage, and sale of marijuana-infused products using sanitary practices and ensure marijuana-infused edible processing facilities are constructed, kept, and maintained in a clean and sanitary condition in accordance with rules and as prescribed by the Washington state department of agriculture under chapters **16-165** and **16-167** WAC.

(11) Marijuana licensees may not allow the consumption of marijuana or marijuana-infused products on the licensed premises.

Further, I thought it would be helpful to provide the general provisions associated with producers and processors:

314-55-075

What is a marijuana producer license and what are the requirements and fees related to a marijuana producer license?

(1) A marijuana producer license allows the licensee to produce, harvest, trim, dry, cure, and package marijuana into lots for sale at wholesale to marijuana processor licensees and to other marijuana producer licensees. A marijuana producer can also produce and sell marijuana plants, seed, and plant tissue culture to other marijuana producer licensees. Marijuana production must take place within a fully enclosed secure indoor facility or greenhouse with rigid walls, a roof, and doors. Outdoor production may take place in nonrigid greenhouses, other structures, or an expanse of open or cleared ground fully enclosed by a physical barrier. To obscure public view of the premises, outdoor production must be enclosed by a sight obscure wall or fence at least eight feet high. Outdoor producers must meet security requirements described in WAC [314-55-083](#).

There are three categories as follows:

- (a) Tier 1 – Less than two thousand square feet;
- (b) Tier 2 – Two thousand square feet to ten thousand square feet; and
- (c) Tier 3 – Ten thousand square feet to thirty thousand square feet.

314-55-077

What is a marijuana processor license and what are the requirements and fees related to a marijuana processor license?

(1) A marijuana processor license allows the licensee to process, dry, cure, package, and label usable marijuana, marijuana concentrates, and marijuana-infused products for sale at wholesale to marijuana processors and marijuana retailers.

The regulations outline some site screening requirements for producers, as well as security requirements and enclosed outdoor productions. Those could be expanded if the commission feels that is appropriate. That could be done on a case-by-case basis through Type 2 review of processors and producers in the M-1 and M-2 districts, or site screening could be required as specified by ordinance. It may be easier, and more effective, to address site screening through

the mitigation methods of a Type 2 review. This would tailor the screening to the location, rather than setting strict rules on site screening for all locations of producers and processors.

6. Marijuana Researchers.

New regulations also added a license called “marijuana researchers.” These businesses will be “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.” RCW 69.50.101. The distance buffers are similar to those for producers, processors and retailers. However, a local jurisdiction can choose to lower the buffer distance to 100 feet for elementary and secondary schools and playgrounds. If that is done, the research facilities must meet heightened security standards, ensure that the facility is inaccessible to the public, ensure that the facility is not in view of the general public, and the facility cannot have any signs or advertising as to the fact that it is a marijuana research facility.

In the draft ordinance provided for your review at the June 8th meeting, I have added “Marijuana Researchers” to the ordinance with the same buffer requirements as producers and processors. Marijuana researchers are brand new, and there isn’t much information on them from other jurisdictions. The category also does not neatly fit under one of the City’s headings, so I placed it in manufacturing, since the research facility has the ability to produce and process the plant for research purposes.

7. Comparisons with alcohol rules.

A. State Regulations: Hours.

Alcohol sales may be conducted from 6:00 a.m. to 2:00 a.m. Marijuana sales may be conducted from 8:00 a.m. to 12:00 a.m.

B. State Regulations: Notification

Both alcohol and marijuana both only require notification to the local city, county, or tribal government of the application for a license.

C. State Regulations: Signs

Signs are heavily regulated in the marijuana regulations. Only two signs are allowed not to exceed 1600 square inches each.