CITY OF YAKIMA

LEGAL DEPARTMENT

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MEMORANDUM

June 10, 2016

TO: Planning Commission Members

FROM: Sara Watkins, Senior Assistant City Attorney

SUBJECT: Additional Details Regarding Marijuana Uses

Dear Commission Members:
There was a lot of discussion regarding notification of surrounding property owners/users at the last commission meeting. I did some additional research and reached out to other municipal attorneys to get an idea of what other jurisdictions are doing.

1. The state-allowed notification language.

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."

Thus, the City is allowed under the new legislation to enact a requirement that all applicants for the state Liquor and Cannabis Board license be required to notify any of the following that are within 1,000 feet of the proposed location:

a. Elementary or secondary school;
b. Playground;
c. Recreation center or facility;
d. Child care center;
e. Church;
f. Public Park;

g. Public transit center;
h. Library; or
i. Arcade not restricted to persons 21 years old or older.

This is the same list as the buffer zones, with the addition of churches.

2. What the state language does not include.

The state authorized language does not include any other types of uses, such as residences, apartment complexes, other retail establishments, or businesses. I do not believe City could enact more restrictive language requiring notice to all property owners within 1,000 feet of a proposed retailer for purposes of the LCB licensing decision. The LCB has exclusive authority over the decision to issue a state license. In so doing, it is the only entity that can set up rules regarding applications and applicant requirements.

Therefore, the Commission can not recommend increasing notice requirements other than as listed in the 2015 legislation, for the process of obtaining a state license for a marijuana business.

3. Local language.

I inquired with other jurisdictions as to whether they required additional notification during the local licensing process for marijuana businesses.

A number of cities use a Conditional Use Permit requirement for marijuana businesses, which requires additional notice to surrounding properties. For example, Walla Walla uses a heightened level of review to evaluate the following matters through a public hearing in front of the hearing examiner, where the hearing examiner is tasked with determining:

a. That the use will not endanger the public health or safety if located and developed where proposed, and that the use will not allow conditions which will tend to generate nuisance conditions to adjoining properties;
b. That the location and character of the use, if developed according to the plan as submitted and approved or conditionally approved, will be compatible and in harmony with the area in which it is to be located;
c. That Conditional Use Permit approval would be in general conformity with the Walla Walla Urban Area Comprehensive Plan as amended; and
d. That the use meets all required conditions and specifications set forth in the zone where it proposes to locate.

WWMC 20.16.040; WWMC 20.173.030.

The notice goes out to all adjacent property owners based on ownership records. WWMC 20.14.065(B)(5)(c).

There is a specific purpose for the notice—the hearing examiner is required to make findings of fact on the four areas listed above, and determine whether it is appropriate to issue a conditional use permit.

Practically speaking, business licenses are granted to businesses that fall under the requirements of the local ordinances. If locating a marijuana retailer in the CBD is a class 1 use, then it is presumed compatible, and as long as it meets the buffer requirements, the license will be issued by staff. The licensing process is set up so that businesses have the confidence that the ordinances will be applied evenly throughout a specific type of business. Unless a heightened review is required, or a conditional use permit process is outlined, allowing public comment on business licenses, after notice, could be problematic.

If the Commission recommends (and Council approves) the language regarding notification at the state license level, then the protected uses, and churches, will be notified if they are within 1,000 feet of the proposed location. The LCB then can use its procedures to review those comments and determine whether a state license should be granted. If the LCB determines based on public comment that a state license will be denied, then the City would not have any authority to issue a business license to the location.

The current proposal has the uses as Class 1 uses.

"Class (1) uses" are those uses set forth and defined in the text and tables of YMC Chapter 15.04 and are considered compatible and are permitted on any site in the district. The administrative official shall review Class (1) uses for compliance with the provisions and standards of this title.

"Class (2) uses" are those uses set forth and defined in the text and tables of YMC Chapter 15.04 and are generally permitted throughout the district. However, site plan review by the administrative official is required in order to ensure compatibility with the intent and character of the district and the objectives of the Yakima urban area comprehensive plan.

Public comment is worthwhile when the public has the opportunity to provide meaningful input on a subject. Here, if a use is a Class 1 use it is presumed compatible. Public comment would not change that language in the zoning code. Without elevating the use to a Class 2 use, or a Type 2 review under a Class 1 use (both of which would require formal public review and comment). In those cases, the Commission should outline the reasons why such heightened review is requested, and what the review will be evaluating (i.e. the four items above in the Walla Walla example). Type 2 review requires notification of adjacent property owners.

Class 1 uses require Type 2 review only in specific circumstances:

Class (1) uses require Type (2) review when:
A. All or part of the development, except for agricultural buildings, single-family dwellings, and duplexes, is in the floodplain or greenway overlay districts;
B. All or part of a development is in the airport overlay (AO);

C. All or part of a development is in an institutional (IO) or master planned development overlay (PD) and is identified in a development agreement as requiring Class (2) approval;
D. The proposed use includes hazardous material;
E. The applicant requests adjustment of one or more of the specific development standards pursuant to YMC 15.10.020; or
F. All or part of the development requires a development plan and/or master plan.

Therefore, it is likely necessary to make marijuana uses a Class 2 use in the land use chart to require additional notice under a Type 2 review. Notice would then go to adjacent property owners, not to property owners within 1,000 feet of the proposed location, pursuant to the language in YMC's zoning ordinances.