

M E M O R A N D U M

DATE: January 15, 2014

TO: Michael Drollinger, Planning Commission Chair
Members of the Renton Planning Commission

FROM: Angie Mathias, Senior Planner

SUBJECT: Marijuana Regulations Consideration

ISSUE

The State of Washington voted to legalize recreational marijuana. The State Liquor Control Board is the body that will be responsible for overseeing the regulations regarding marijuana business licenses. The City does not have these new marijuana related businesses in the Zoning Use Table and has not previously considered marijuana producer, processor, or retail businesses as land uses. How should these land uses be categorized? Additionally, should the City adopt any additional regulations for these land uses?

RECOMMENDATION

Staff recommends categorizing producers and processors both as Heavy Industrial and requiring producers to be an indoor use only. In regards to Retailers, staff recommends they be added to the same land use category as Taverns. Finally, the City should establish additional locational requirements for all marijuana businesses. Those requirements should be that they not be located within 1,000 feet of a drug rehabilitation center, substance abuse facility, or detox center and that they not be located near another marijuana business. However, staff does not have a recommendation for how far the distance should be.

ISSUE DISCUSSION

The Washington State Liquor Control Board (LCB) is the body that regulates the recreational marijuana industry in the state and issues licenses for the marijuana businesses. There are many rules that the LCB has in place to regulate marijuana businesses that relate to land use. Those rules include:

All licensees:

- Because law enforcement is required to provide notice in order to gain access to residences, no license will be approved for a residence.
- Internet sales, delivery, mail orders, as well as sales through drive-up windows are not allowed.
- No marijuana businesses (producers, processors, and retailers) may be located within 1,000 feet (straight line measurement from property line) of the following (a map showing these buffered uses provided as Attachment A):
 - Elementary or secondary schools – must be recognized by the State Superintendent of Public Instruction
 - Playgrounds – “usually equipped with swings, slides, or other playground equipment” that is “owned and/or managed by a city, county, state, or federal government”
 - Recreation centers or facilities – must be owned and/or managed by a non-profit, city, county, state, or federal government
 - Child care centers – must be licensed by the State Department of Early Learning
 - Public parks – does not include trails. Must have “facilities for rest and/or recreation, such as a baseball diamond or basketball court” and be “owned and or managed by a city, county, state, federal government, or metropolitan park district”
 - Public transit centers – must be “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.”
 - Libraries – must be supported with money derived from taxation
 - Game arcades – must be open to those under age 21
- Must employ security standards that include:
 - An alarm system with sensors on all perimeter entry points and perimeter windows.
 - A video surveillance system that monitors all entrances and exits from both interior and exterior vantages, as well as all controlled areas within the facility. Outdoor grow operations must have video surveillance of the entire perimeter.

Retailers:

- Marijuana retailers are not allowed to be located within another business.

- Allowable hours of operation for retail sales are between 8am and 12am.
- Allowed to have maximum of 4 months' worth of average inventory on site.
- May have one sign identifying the business name, affixed or hanging in a window or on the outside of the building. It may not measure more than 1,600 square inches.

Producers:

- Production can occur at any of the following:
 - A fully enclosed secure indoor facility
 - A greenhouse with rigid walls, a roof, and doors
 - Outdoors with an 8' sight obscuring all or fence and with the same security as all other marijuana licensees
- The maximum amount of allowable marijuana plant canopy any single producer can have is 30,000 square feet. There are three tiers of producers:
 - Tier 1 – less than 2,000 square feet of plant canopy
 - Tier 2 – 2,000 to 10,000 square feet of plant canopy
 - Tier 3 – 10,000 to 30,000 square feet of plant canopy
- The maximum amount of marijuana producers may keep on-site depends on the type of facility it is.
 - Indoors – 6 months' worth of annual harvest
 - Greenhouses and outdoors – 1 ¼ years' worth of annual harvest
- To aid in growing, producers may only use:
 - Pesticides and fertilizers that are registered with the Washington State Department of Agriculture.
 - Any potting soil or other growing media that is commercially available in Washington.
 - Materials that qualify as organic (listed or registered by the Organic Materials Review Institute or the Washington State Department of Agriculture as organic).

Processors:

- Allowed to have a maximum of 6 months average worth of useable marijuana and 6 months of total production on site.
- Solid and liquid waste must be stored, managed, and disposed of in a specified manner.
- The allowable solvents, equipment, and/or methods used to make marijuana extract are:

- Hydrocarbons such as “N-butane, isobutene, propane, heptane, or other solvents/gases that exhibit low to minimal potential human health-related toxicity”.
 - Must be used in a professional grade closed loop system, where no sparks will be made, and where it is ventilated.
- Food grade glycerin, ethanol, and propylene glycol solvents
- Carbon dioxide gas extraction system provided it is professional grade and closed loop.
- Heat, screens, presses, steam distillation, ice water, and other methods that don’t use solvents or gases.
 - Only if creating kief, hashish, bubble hash, infused dairy butter, or oils and fats derived from natural sources.

At this point in time, the maximum number of marijuana retail licenses that will be issued for business located in the City of Renton is three. At some time in the future, the LCB may allow additional retail licenses to be issued. There is no maximum number of licenses that will be issued for producers and processors. However, for producers, statewide production is limited to two million square feet of plant canopy. So, if collectively, producers hit the two million square foot limit the LCB will reduce the maximum amount of canopy each producer is allowed to have.

Zoning Classifications

The marijuana licenses created by Initiative 502 are for business categories that the City has not considered before. As shown on Attachment B, the Zoning Use Table (4-2-060) does not indicate what zones these land uses would be allowed in. Therefore, the City needs to identify the land uses that are most similar and include the businesses in with that type of use or to amend the table with the businesses as entirely new land uses.

The LCB will not issue licenses to locations where law enforcement would be required to provide notice to enter. This means that residences would not be issued licenses. In the Zoning Use Table, zones that are left blank are prohibited from engaging in that land use. So, by leaving the Zoning Use Table blank in residential zones, no marijuana related businesses will not be allowed in those zones.

Producers and Processors

The LCB will allow people to hold both a producer and a processor license and those who hold both licenses will not be required to pay a 25% tax for sales between producers and processors. Therefore, it is reasonable to anticipate that in many

instances these two uses will, in practice, be one business. For processors, marijuana extraction requires the use of solvents and gasses. This makes a processor business most similar to an industrial or manufacturing use. Staff recommends that marijuana producers and processors be defined as Industrial Heavy. The City has two different types of industrial and three different types of manufacturing defined. They are:

INDUSTRIAL USE, HEAVY: A type of land use including manufacturing processes using raw materials, extractive land uses or any industrial uses which typically are incompatible with other uses due to noise, odor, toxic chemicals, or other activities posing a hazard to public health and safety.

INDUSTRIAL USE, LIGHT: A type of land use including small scale or less intensive production manufacturing, distribution or fabricating activities. May also include office and supporting convenience retail activities.

MANUFACTURING AND FABRICATION, HEAVY: The transformation of materials or substances into new products including construction and assembling of component parts, and the blending of materials such as lubricating oils, plastics, resins or liquors. Heavy manufacturing and fabrication are often characterized by the need for large outdoor areas in which to conduct operations, and typically results in environmental impacts beyond their own sites. This definition includes, but is not limited to: manufacture and fabrication of automotive vehicles and their parts, cement, brick, lime, gypsum, asphalt, and other manufacturing and fabrication uses as determined by the Community and Economic Development Administrator. This definition excludes slaughterhouses, manufacture of shellac, varnish or turpentine, paper, pulp, rubber from crude material, refining and/or manufacturing of petroleum by-products except as an accessory use of less than fifty thousand (50,000) gallons.

MANUFACTURING AND FABRICATION, MEDIUM: The transformation of materials or substances into new products including construction and assembling of component parts, and the blending of materials such as lubricating oils, plastics, resins or liquors. Medium manufacturing and fabrication is characterized by need for only very limited areas of

outdoor storage and may create minor external environmental impacts during the conduct of operations but most impacts are contained on-site. This definition includes but is not limited to manufacture and fabrication of alcoholic products, paints, printing ink, leather goods, and other manufacturing and fabrication uses as determined by the Community and Economic Development Administrator. This definition excludes slaughterhouses, manufacture of shellac, varnish or turpentine, paper, pulp, rubber from crude material, refining and/or manufacturing of petroleum by-products except as an accessory use of less than fifty thousand (50,000) gallons.

MANUFACTURING AND FABRICATION, LIGHT: The transformation of materials or substances into new products including construction and assembling of component parts, and the blending of materials such as lubricating oils, plastics, resins or liquors. Light manufacturing and fabrication is characterized by the use being contained within buildings, and materials or equipment used in production not being stored outside. Light manufacturing and fabrication activities do not generate external emissions such as smoke, odor, noise, vibrations or other nuisances outside the building. This definition includes but is not limited to manufacture and fabrication of electronic components, office products, furniture, glass products, and other manufacturing and fabrication uses as determined by the Community and Economic Development Administrator. This definition excludes slaughterhouses, manufacture of shellac, varnish or turpentine, paper, pulp, rubber from crude material, refining and/or manufacturing of petroleum by-products except as an accessory use of less than fifty thousand (50,000) gallons.

Given the City's definitions, the most comparable land use designation is Industrial Heavy. Processors start with raw materials and use solvents, gases, chemicals, and compounds to create extracts and to process marijuana infused products. Additionally, as the definition indicates, marijuana growing and processing will create odor impacts to the surrounding area because as part of the marijuana growing process there is a "green" smell that can be detected off-site. "The pungent odor from marijuana cultivation operations is objectionable to many people. Offensive odors can easily migrate in and around the marijuana cultivation site and some strains produce odors that are detectable in the surrounding neighborhood as well as adjacent tenants (Best

Management Practices: Commercial Medical Marijuana Cultivation, City of Denver, April 2011).” However, Industrial Heavy is not currently listed in the Zoning Use Table; it is only included in the definitions. Staff proposes permitting it outright in the Industrial Heavy zone. Consideration should be given to allowing it in the Industrial Medium zone, either outright or with some conditions.

Marijuana Retailers

Taverns are very comparable to the way in which marijuana retailers will function. Both taverns and marijuana retailers must hold a license issued by the State. Additionally, people under the age of 21 are not allowed to enter either type of business. The City defines Taverns as:

“TAVERN: An establishment used primarily for the serving of liquor by the drink to the general public that holds a Washington State tavern license.

Establishments in this category limit their dedicated dining area to less than fifteen percent (15%) of the total establishment and restrict entry to the premises to persons twenty one (21) years of age and older. This definition excludes restaurants, cafes, fast-food establishments, microbreweries with restaurants, and espresso stands.”

Staff recommends adding Marijuana Retailers to the Taverns land use and defining Marijuana Retailers. Staff proposes closely matching the LCB definition and defining Marijuana Retailers as, “Businesses that are licensed by the Washington State Liquor Control Board to sell useable marijuana and/or marijuana infused products.”

Staff also recommends deleting the footnote associated with taverns in the Commercial Arterial (CA) zone. The footnote currently does not allow the use within the Northeast Sunset, Northeast Fourth (4th), and South Puget Drive Commercial Corridor Comprehensive Plan designation, yet allows it as an Administrative Conditional Use in the Center Village (CV) zone. The CA zone has a great number of more uses allowed within it and with fewer limitations than the CV zone, so this footnote seems overly restrictive for manner in which the CA zone currently functions. Staff proposes eliminating the footnote and permitting both Taverns and Marijuana Retailers with no footnote in the CA zone. The other zones with associated footnotes that Taverns are allowed (and Marijuana Retailers would be allowed) in are:

- Center Downtown (CD) – as an Administrative Conditional Use
- Commercial Office Residential (COR) – Permitted, with the following footnote:

- Except for marinas, the use must be housed in a structure containing one (1) or more of the following uses: offices, residences, hotels, convention centers, and/or research and development facilities. The requirements in this Section may be adjusted through the Master Plan process.
- Urban Center North One (UC-N1) – Permitted, with the following footnote:
 - a. Multi-story, stand-alone retail buildings greater than seventy five thousand (75,000) square feet are allowed only with structured parking and a maximum building footprint of sixty five thousand (65,000) square feet.
 - b. No freestanding structures smaller than five thousand (5,000) square feet are permitted, unless architecturally and functionally integrated into overall shopping center or mixed use development. Stand-alone retail buildings are not allowed east of Lake Washington Boulevard North.
 - c. Buildings oriented along Park Avenue must have one or more pedestrian entries on Park Avenue.
- Urban Center North Two (UC-N2) – Permitted, with the following footnote:
 - Must be located within a mixed use structure. Buildings oriented to pedestrian streets must have ground-floor commercial uses within them.

Although many jurisdictions have categorized marijuana retailers as Retail Sales staff does not feel this is the best categorization for Renton. Especially, with the strong similarities to Taverns. Renton defines Retail Sales as:

RETAIL SALES: Establishments within a permanent structure engaged in selling goods or merchandise to the general public for personal or household consumption and rendering services incidental to the sale of such goods. This definition includes multi-story retail use buildings greater than seventy five thousand (75,000) square feet that have a minimum of two (2) stories dedicated to retail sales. This definition also includes department stores, retail shops, grocery stores and large format retailers developing using a multi-story format. This definition excludes adult retail uses, vehicle sales, one-story big-box retail, outdoor retail sales, eating and drinking establishments, and taverns.

Retail Sales are allowed in Renton as follows:

- Center Downtown (CD), Commercial Arterial (CA), and Center Village (CV) – Permitted with no footnotes
- Residential Multi-Family (RMF), Residential Multi-Family Traditional (RMT), and Residential Multi-Family Urban (RMU) – Administrative Conditional Use

- Residential Fourteen Dwelling Units per Acre (R-14) – Permitted with the following footnote:
 - Retail uses, eating/drinking establishments, and on-site service uses are prohibited within the Center Village land use designation unless they are accessory to a school, park, or entertainment and recreational use as allowed in RMC 4-2-060E, F and J. Commercial uses may not be greater than five thousand (5,000) square feet of gross floor area.
- Industrial Light (IL), Industrial Medium (IM), and Industrial Heavy (IH) – Permitted with the following footnote:
 - Only allowed in the Employment Area Valley (EAV) land use designation, provided:
 - a. Gambling facilities, vehicle and equipment rental and communication broadcast and relay towers are excluded within the area south of I-405 and north of SW 16th Street;
 - b. Large vehicle sales are only allowed in the area south of I-405 and west of SR167/Rainier Avenue South.
 - c. Outdoor storage and retail sales are allowed as an accessory use in industrial zones.
 - d. Self-service storage is allowed as an administrative conditional use in Industrial Light (IL) Zones.
- Commercial Neighborhood (CN) – Permitted with the following footnote:
 - Self-service storage must be part of a mixed use development. Retail sales uses in the CN Zone are limited to: flowers/plants and floral supplies; mini-marts; crafts, including supplies and finished products; gift shops; specialty markets; and other similar small scale, low-intensity commercial uses that serve nearby residents, as determined by the Community and Economic Development Administrator.
- Commercial Office Residential (COR) – Permitted with the following footnote:
 - Except for marinas, the use must be housed in a structure containing one (1) or more of the following uses: offices, residences, hotels, convention centers, and/or research and development facilities. The requirements in this Section may be adjusted through the Master Plan process.
- Commercial Office (CO) – Permitted with the following footnote:
 - Allowed outright in the Employment Area Valley (EAV) land use designation. Outside the EAV, the use shall be developed as part of larger office structures. Such uses shall not stand alone and shall not occupy

more than twenty five percent (25%) of a building whose primary use is for office-related use. Outside the EAV, indoor recreation uses shall not occupy more than twenty five percent (25%) of any one (1) floor.

- Urban Center North One (UC-N1) and Urban Center North Two (UC-N2) – Permitted with the following footnote:
 - a. Multi-story, stand-alone retail buildings greater than seventy five thousand (75,000) square feet are allowed only with structured parking and a maximum building footprint of sixty five thousand (65,000) square feet.
 - b. No freestanding structures smaller than five thousand (5,000) square feet are permitted, unless architecturally and functionally integrated into overall shopping center or mixed use development. Stand-alone retail buildings are not allowed east of Lake Washington Boulevard North.
 - c. Buildings oriented along Park Avenue must have one or more pedestrian entries on Park Avenue.

Additional Restrictions:

Alan Rathbun of the Liquor Control Board has said that they will not consider denial of a marijuana license “based on a local ordinance”. However, they do intend to let applicants know “if there is a local “hurdle” that must be crossed before they can ultimately operate in their chosen location”. So, if the City of Renton adopts land use regulations that are supplemental to the LCB rules, there is the likelihood that the LCB will issue marijuana licenses for businesses that would not meet the supplemental criteria adopted by the City. Yet, LCB rules explicitly state that their issuance or approval of a license is not to be considered a “license for, or approval of, any violations of local rules or ordinances including, but not limited to: building and fire codes, zoning ordinances, and business license requirements”. Additionally, Rathbun stated that the LCB recognizes that “many cities and counties have business licenses or other local land use requirements over which they have authority”. In the LCB’s summary of all public comments received on rulemaking, the Board’s reply to concern about at risk persons stated “Local jurisdictions through the zoning process will be deciding which areas will be allowed to have marijuana licenses. Concerns should be shared with local jurisdictions”. Given these rules and comments, the City should anticipate that if the City adopts supplementary rules, there may be marijuana licenses issued to locations where the license holders cannot in fact conduct business. This is recognized by the LCB as within the authority of local jurisdictions.

As shown in Attachment C, some jurisdictions have placed additional restrictions on the different marijuana businesses. For example, requiring producers to be indoors or requiring all businesses to be 1,000 feet from a residential zone, a substance abuse treatment facility, or another marijuana business. Given the incentivized pairing of marijuana producers and processors, with no requirement to pay 25% tax for sales between the two if both licenses are held by one person/entity, it is appropriate to require marijuana producers to be indoors. Therefore, staff proposes adding this as a requirement. In regards to locational requirements, staff proposes not allowing marijuana related businesses within 1,000 feet of a substance abuse treatment facility, drug rehabilitation facility, and/or detox center. Also, staff proposes limiting marijuana businesses from locating near each other. This would work to ensure that no one particular neighborhood is uniquely impacted by a concentration of marijuana related businesses. There is no recommendation for how much distance to require. All other distance requirements are for 1,000 feet. The City of Everett requires marijuana retailers to be at least 2,500 feet away from other marijuana retailers. Consideration should be given to requiring only marijuana retailers to comply with a requirement to be a certain distance from other marijuana retailers. This would ensure that no area of the City had more than one marijuana retail outlet. The LCB has designated Renton to have 3 marijuana retailers, a significant distance requirement for retailers would ensure that all 3 are not located in one area of the City.

Medical Marijuana

In December 2013, recommendations were made to the State Legislature regarding the regulation of medical marijuana. Within these recommendations was the recommendation to no longer allow medical marijuana collective gardens. Staff recommends continuing the City's moratorium regarding medical marijuana until the State Legislatures response to this recommendation is known.

Staff has included the following as attachments:

- Attachment D - State Liquor Control Board Fact Sheet on I-502
- Attachment E - State Liquor Control Board Frequently Asked Questions
- Attachment F - Complete text of the final adopted Liquor Control Board rules for recreational marijuana businesses
- Attachment G - City of Renton Zoning Map