



City of Clarkston

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PLANNING COMMISSION

AGENDA

May 6, 2013

CITY HALL

829 5TH STREET

CALL TO ORDER: 5:30 P.M.

ROLL CALL:

APPROVAL OF MINUTES:

November 19, 2012

REGULAR BUSINESS:

- A. Zoning Regulations related to Marijuana Initiative I-502 - Discussion

UNFINISHED BUSINESS:

COMMUNICATIONS:

- A. From Public
- B. Written
- C. From Planning Commission
- D. Staff Reports

ADJOURN:



TREE CITY USA.

CITY OF CLARKSTON
PLANNING COMMISSION MINUTES
November 19, 2012

CALL TO ORDER: 5:30 P.M., Clarkston City Hall, Chair Murray
ROLL CALL: Bob Gilbertson, Larry Moser, John Murray, Jim Merrill
Absent: Margo McCroskey

Staff: Jim Martin, Chief Cooper

APPROVAL OF MINUTES:

Minutes of the March 19, 2012 meeting were approved on a motion by Larry Moser. Motion carried.

PUBLIC HEARINGS:

REGULAR BUSINESS:

A. Present Proposed Planned Unit Development, 200 Fair St.

Mr. Jerry Cox the owner of 200 Fair Street proceeded to describe to the Commission his concept of the change to apartments from the townhome concept that had already gone through the approval process. A business plan was put together and reviewed to indicate the need for rental units in our area. A recent apartment complex in Lewiston was constructed and filled pretty quickly. A rental study does support the need for additional rentals in our area. Mr. Cox went on to explain that these units will be some of the few dwellings in the area that have the easy access to the greenbelt along the river, the area shopping, and dining in walking distance. Commissioners questioned infrastructure requirements and what improvements were planned for the residents to access the river area. Mr. Cox will need to provide additional information for the amendment of the PUD that was approved in the past including but not limited to the SEPA process and a full review of the PUD requirements.

Public Works Director will follow up and assist with the process.

COMMUNICATIONS:

Planning Commission:

Members of the Commission once again expressed their disappointment in LC Advantage Realty in the lack of progress on the required off street parking area for the business that received a zone change in the past. Public Works Director will follow up.

Chairman Murray explained that he had participated in the MPO presentation of the local Long Range Transportation Plan and was extremely disappointed in the lack of participation by our Elected Officials. They did make a strong case to improve Bridge Street and the connectivity with the Port of Clarkston industrial park on Evans Road.

Staff:

PWD mentioned the commercial use of some property on the north side of Poplar Street that is in a residential zone. A used RV sales lot on Bridge Street has crept south and is storing RV's in a residential area. PWD was curious if the Commission would consider a change to commercial given the fact that the owner had specifically platted the area for residential dwellings. The Commission didn't like the idea but mentioned that he could indeed apply if he would like. PWD will follow up with some advice to the owner.

ADJOURNMENT:

Meeting adjourned at 6:20 p.m.

John Murray, Chair



FAQ on the Marijuana Initiative, I-502

The following are a collection of questions that have been raised as cities evaluate how best to respond to the approval of I-502. Cities should revisit their policies and procedures with their legal counsel to ensure that their actions are in compliance with the new law.

Law enforcement impacts

Law enforcement agencies should revisit their policies and procedures with their legal advisors to ensure that their actions are in compliance with the new law.

Who can have marijuana, and how much?

According to the initiative, on December 6, adults over the age of 21 are allowed to carry any combination of the following: up to 1 ounce of usable marijuana, 16 ounces of marijuana-infused product in solid form, 72 ounces of marijuana-infused product in liquid form.

What are the consequences of possession over an ounce? For a person 21 years and older, possession in the range above one ounce to 40 grams (about 1.5 ounces) results in a misdemeanor. Possession of more than 40 grams is a Class C Felony.

Where can you legally buy marijuana? The Washington State Liquor Control Board has until December 1, 2013, to establish guidelines and regulations for the sale and distribution of marijuana. Until then, it is illegal to purchase marijuana from an unlicensed provider. It is also illegal to grow or sell marijuana. Collective gardens used by medical marijuana patients are not affected by the language of this initiative.

What constitutes an infraction for marijuana?

Law enforcement officers have probable cause to cite for the infraction based upon seeing someone with the product or smelling it, and the person is within public view. This person would be charged with a Class 3 civil infraction under RCW 7.80. Though the fine is not directly specified in the initiative, some have predicted the citation will likely result in a \$103 fine.

Can law enforcement seize marijuana and paraphernalia? Unless they can articulate some other behavior that suggests a criminally illegal behavior or activity, further searches of the person are not lawful. Different agencies' policy will dictate seizure of any marijuana or paraphernalia. At this time, it is unclear whether the marijuana and paraphernalia will be seized or not.

If a law enforcement officer witnesses a person smoking what appears to be marijuana, can they then search that person? The officer who witnesses the infraction can contact the person and issue the citation. Officers can initiate a search only if there is suspicion or indication that the person receiving the citation may be armed, or if that person gives the presiding officer indication they have criminal possession on their person.

Must law enforcement officers have warrants for blood tests? If officers believe someone is driving under the influence and impaired, they will conduct a field sobriety test. If officers establish probable cause, they will ask for permission to draw blood, or they can obtain a warrant from a judge. In the case of a collision, blood draws are mandatory. The provisions and policies of a blood draw are not a new practice and were not changed by the initiative.

How does law enforcement obtain blood?

Officers must follow their agency's policy. Many take the person to the nearest hospital facility for the blood draw.

Personnel & policy

Can employers continue to test for marijuana?

Similar to alcohol, employers may require testing, discipline for policy violations, and regulate use or impact in the workplace. Employers should make sure that their personnel policies are up to date and include legalized marijuana, and consult with their city or agency legal representative.

Is there a difference between the 5ng (nanogram) threshold and the 15ml (milliliter) threshold that urine tests from Department of Licensing (DOL) use?

Yes. 5ng is the limit set forth by the initiative as the per se level of impairment for someone under the influence of marijuana. This is measured by a blood test designed to detect "active metabolites." Studies indicate that active metabolite levels fall to approximately 2ng within 4-6 hours of use. Commercial Driver License (CDL) holders are regulated by DOL, which follows federal regulations and uses the 15ml threshold. This level is measured by a urine test.

What about off-duty marijuana consumption?

Washington public employers have a strong legal basis to discipline or discharge employees who test positive for marijuana if this action is consistent with the respective contracts, policies and past disciplinary action. However, further legislation and litigation will likely determine whether discharge for off-duty marijuana use violates public policy.

Land use & zoning

Can jurisdictions implement policies to limit producers, processors and retailers licenses and locations? Growing marijuana (unless it is a collective garden) remains illegal until the Liquor Control Board (LCB) establishes a process for licensing and regulation. The LCB will also regulate permissions for marijuana cultivation, processing, distribution, and retail facilities. The LCB is taking public comments until Feb. 10 about the rules and restrictions needed for a marijuana-grower license.

The initiative specifies that only state-licensed production, processing and sale of marijuana are permitted. The initiative intended that the licensing process be similar to that for alcohol. Cities will have the ability to object to the LCB regarding a proposed license. Presumably, local land use and zoning regulations will apply to the siting of growing, processing and retail outlets. The initiative specifies that such facilities must be at least 1,000 feet from elementary and secondary schools, playgrounds, recreation centers, day cares, parks, transit centers, libraries and arcades.

Medical marijuana collective gardens and not affected by this initiative.

Taxes & revenue

Will cities get any revenue from the sale of marijuana? The initiative does not provide for any direct funding to cities. Cities will receive their share of local sales tax revenues and any locally imposed B&O taxes. The Washington State Office of Financial Management (OFM) estimates that locals could receive as much as \$120 million in these taxes over five years. However, there has been some concern that OFM overestimated how much marijuana will actually be consumed from these state-licensed stores. Cities will not see any revenue from marijuana sales until at least December 2013.

What about all of the expected new revenue from legal marijuana sales? The initiative created a specific new taxing scheme. The initiative provides for a 25% excise tax at each transaction point (producer to processor, processor to retailer, and retailer to consumer). The taxes will be placed in a dedicated marijuana fund. After quarterly distributions of \$1.25 million for LCB administration and \$180,000 to other specific programs, the taxes will be distributed as follows:

- 50% to the state's Basic Health Plan
- 19.07% to the state general fund
- 15% to the Department of Social & Health Services for behavioral health & recovery
- 10% to the Department of Health for marijuana education & public health
- 5% to Community Health Centers
- 1% to the UW and WSU for research on the short- and long-term effects of marijuana use
- 0.03% to the Building Bridges Programs

Marijuana Producers, Processors, and Retailers – Where Will They Be Setting Up Shop?

Posted on March 5, 2013 by Jim Doherty



It's been almost four months since Washington voters passed Initiative 502 and directed our state to take a "new approach" to adult marijuana use: regulate and tax instead of prohibit. Are you, and your community, still in shock? Have some residents been telling you that they "certainly don't want any such businesses locating anywhere in _____!!" – while at the same time potential marijuana entrepreneurs are contacting the planning department and searching for prospective locations?

The state Liquor Control Board is working hard at coming up with the basic regulations, but nothing has been issued for public comment yet. We encourage you to visit its *I-502 Implementation* page to stay current on the rule development process. But do not expect the board to issue regulations that will resolve many of the city and county planning issues presented by I-502.

Have you thought about the distinctions between marijuana producers, processors, and retailers? Initiative 502 delineates three levels for this regulated business. The growers are restricted to growing the plant; the processors are the ones who incorporate the plant product into edibles, liquids, or packaged bud ready for retail; and the retailers are, as expected, the people who run the shops where marijuana products and related paraphernalia are sold.

There is, fortunately, one clear land use provision in initiative 502, found in subsection 8 of section 6:

The state liquor control board shall not issue a license for any premises within one thousand feet of the perimeter of the grounds of any elementary or secondary school, playground, recreation center or facility, child care center, public park, public transit center, or library, or any game arcade admission to which is not restricted to persons aged twenty-one years or older.

That provision applies to marijuana producers, processors, and retailers. So we suggest that each jurisdiction start by having its planning department do a careful job mapping out areas that are specifically excluded from having any marijuana-related businesses. You might be surprised. We talked to one smaller town in eastern Washington that concluded there is no place in town where any marijuana business can legally locate. We suspect that in many jurisdictions there will be limited or even no locations where such businesses can locate.

You really cannot assess your situation until you know, after consideration of the locational restrictions imposed by the initiative, the potential locations for these marijuana-related businesses. Once your city or county has done that mapping and determined where these businesses could potentially locate, there are some obvious questions that need to be addressed, such as: what is the applicable zoning for these areas; in which of these areas might you want to allow these marijuana-related businesses to locate; and will they be allowed as a permitted or as a conditional use?

Marijuana growers. Here's a thorny question: if someone is growing marijuana in an enclosed building (not a greenhouse), is that an agricultural use? At this point we don't know whether the Liquor Control Board will be issuing licenses to many small growers, or to just a few larger growers, or to a mix of both. A state-licensed grower may want to locate in small warehouse in your jurisdiction's commercial or industrially zoned areas – is that

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agricultural type use currently allowed? To take the lingering “moral” issue out of the question, consider where your jurisdiction would allow someone to construct greenhouses for flower cultivation. Should outdoor growing or greenhouse cultivation be allowed in all agriculturally zoned areas?

Marijuana processors. What zones in your jurisdiction might be appropriate for marijuana processors? Remember that marijuana will be sold for consumption not only in the raw, smokeable form but also through “marijuana-infused” products, such as baked goods and liquids. For an equivalent business, consider someone who has a business making baked goods or a small chocolates factory. Where in your jurisdiction would you normally allow such a business to locate? People in the food processing business need to meet various state and county health and safety codes. Is there any basis for treating marijuana processing differently than food processing businesses?

Marijuana retailers. (Note that retailers may sell only marijuana, marijuana-infused products, and paraphernalia, and that they may display only a single sign no larger than 1600 square inches, displaying the business name.) Should a jurisdiction allow marijuana retailers to set up shop in any area zoned for retail use (so long as it meets the 1,000-foot exclusion zone requirement)? Might there be different safety concerns for marijuana retailers than for other types of retail businesses? Will the likely clientele be different? How will your community feel about such businesses? These are but a few of the questions you will end up asking.

The Liquor Control Board now estimates that it will have draft regulations for the marijuana producer licenses released for public comment around mid-April. The draft regulations for processors and retailers will come later. It will be a few months between the issuance of draft regulations and when the final regulations will go into effect. This is going to take a while. In the meantime, we suggest that you spend some time thinking about the many zoning issues raised by this new class of business. Will your jurisdiction have sufficient time to adopt local land use regulations? Should your jurisdiction consider interim regulations or a moratorium on accepting applications for such uses?

Before the Liquor Control Board issues a license for a marijuana business, the local jurisdiction – city or county – has an opportunity to file written objections against the applicant or against the proposed location, and the local jurisdiction can request that a hearing be held by the board. See subsection 7 of section 6 of Initiative 502 for details regarding this process.

Local licensing. When a marijuana entrepreneur shows up with a state-issued license for growing, processing, or retailing marijuana, is the city or county required to issue a local business license (assuming that zoning requirements are met)? We think so (though see below). To forestall people applying for business licenses before they obtain a state license, you may want to consider expressly requiring a state license as a condition of issuing a business license.

If marijuana businesses are not prohibited based on the initiative’s locational restrictions, can a jurisdiction prohibit in its zoning code all marijuana businesses, either because of local public sentiment or based on concerns involving the ongoing federal prohibition? This is an issue the initiative does not address and it remains an open question. Your legal counsel should be consulted should your jurisdiction be considering such a course of action.

Be patient with all the uncertainty regarding these issues. This topic will be studied diligently by county prosecutors and city/town attorneys over the coming months. We expect that there will be a wide range of approaches taken to these questions. Nobody has any clear answers – we aren’t in Kansas any more!

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[MRSC recently posted a new webpage on “Recreational Marijuana - Initiative 502 Implementation.” Additional materials will be posted there as regulations are adopted by the Liquor Control Board, and as jurisdictions start to adopt local ordinances dealing with the above issues.]

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About Jim Doherty

Jim has 19 years of experience researching and responding to varied legal questions at MRSC. He updates MRSC's Public Records Act publication and has special expertise in transmission pipeline planning issues.

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One Response to *Marijuana Producers, Processors, and Retailers – Where Will They Be Setting Up Shop?*



Steve Erickson says:

March 7, 2013 at 11:17 am

Agreed. We are definitely not in Kansas. We're in Washington, where the people spoke very loudly and clearly.

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