

MEMORANDUM

TO: Mayor Kathy Coffey, and Councilmembers
Cliff Moore, City Manager

FROM: Sara Watkins, Senior Assistant City Attorney

DATE: August 2, 2017

SUBJ: Planning Commission's Recommendation on Marijuana Retailer
Location Expansion to M-1

At your August 1, 2017, regular council meeting, you were provided the findings and recommendations of the Planning Commission regarding expansion of marijuana retailing to the M-1 zoning district. This memo serves as a short summary of the procedure, Planning Commission decision, and the Council's options.

1. Summary of Procedure

In late April a letter was forwarded to the City Council and City Manager seeking to have the Council allow marijuana retailers to operate within the M-1 zone. Upon review, the City Council sent the issue to the Planning Commission, giving it sixty (60) days to evaluate the request and provide the Council with a recommendation.

The Planning Commission discussed the matter at its June and July , regularly scheduled meetings (both of which are available for viewing on the YPAC website). The recommendation was forwarded to the Council and first evaluated at your August 1, 2017, business meeting.

2. The Planning Commission's Recommendation

The Planning Commission recommended that there be no change in the locations available for marijuana retailers.

The Planning Commission's discussion on the issue focused on the purpose of the M-1 zoning district. The Council may not know this, but the first time the Planning Commission looked at the marijuana issue (the summer of 2016 when Council ultimately legalized marijuana businesses in the City), the Commission went through an exhaustive and in depth review of the types of marijuana business and the purposes and definitions of the various zones within the City to determine where marijuana businesses were compatible with the zoning districts.

The M-1 zoning district intent is outlined in YMC 15.03.020(N) as follows:

Light Industrial District (M-1). The intent of the light industrial district is to:

1. Establish and preserve areas near designated truck routes, freeways, and the railroad for light industrial uses;
2. Direct truck traffic onto designated truck routes and away from residential streets; and
3. Minimize conflicts between uses in the light industrial district and surrounding land uses.

The light industrial district provides areas for light manufacturing, processing, research, wholesale trade, storage, and distribution facilities.

Uses permitted in this district should not generate noise levels, light, odor, or fumes that would constitute a nuisance or hazard.

As can be seen by the definition, and as was discussed by the Planning Commission, there is no mention of general retail activities in the intent statement regarding the light industrial zone (some retail activities are allowed, see below, but the intent of the district does not include a retail component). Since there is no mention of general retail activities as an intent of the zoning district, the Planning Commission originally found, and continues to find, that marijuana retail activities do not meet the intent of the district. As a result, the Planning Commission did not recommend allowing marijuana retailers to operate in the M-1 zone.

During the Planning Commission discussion there was no mention of any specific location within the M-1 where a retailer might locate. The discussion focused on adding the entire M-1 zoning district as an allowed district for marijuana retailing. There was some discussion of the map that was provided to the Planning Commission showing the additional locations available if the M-1 zone allowed marijuana retailers. The Planning Commission noted that allowing marijuana retail activities in the M-1 could open the door to all retail activity in the M-1, which is not the intent of the zone. No one from the public spoke in favor or against adding the M-1 zone to marijuana retailers at either of the Planning Commission meetings.

The Planning Commission, after discussing whether marijuana retail activities were consistent with the intent of the M-1 zone, determined that such activity was not consistent, and recommended that no marijuana retail activities should be allowed within the M-1 zoning district.

3. The Council's Options

The Planning Commission provides a recommendation to Council, as the body that is created to do the research and evaluate zoning and planning issues for the City. The Council is the ultimate determiner of code language changes.

By determining that the intent of the M-1 zoning district is not consistent with marijuana retailers, the Planning Commission did not get into the details of what type of review might be necessary to open a marijuana retailer in the M-1 if allowed. Under the M-1 zone regulations, retailers that are authorized by the code to locate in the M-1 district, depending on type, must go through elevated review because the zone is not intended to have general commercial retail activities. For general retail sales that are not specified in the zoning chart, there is a Type 3 enhanced review. Convenience stores must go through an enhanced Type 2 review to locate within the M-1 zone. Liquor stores are not allowed in the M-1 zone. See YMC 15.04.030—Table of Permitted Land Uses.

If the Council chooses to allow marijuana retail sales in the M-1 zone, the Council should also evaluate what type of review that retail use must go through—1, 2, or 3. Here is a summary of each review type:

Type 1: Presumed compatible with the zoning district, must provide basic documentation as part of the application, and meet all building code and development code requirements. The review is done administratively by the Planning Department.

Type 2: Presumed compatible with the zoning district, but heightened review and likely mitigation measures for the use in the zone. Applicants must provide application documentation and meet all building code and development code requirements. Adjacent property owners within 300 feet of the property are notified of the application. Generally the Planning Department will make the decision, but if they believe formal public review and comment will assist in determining proper mitigation of impacts, the Planning Department can elevate the review to a Type 3 review.

Type 3: Presumed not compatible with the zoning district without mitigating measures, and in some cases mitigation of effects would not be compatible with the zoning district. Applicants must provide application documentation and meet all building code and development code requirements. Adjacent property owners within 300 feet of the property are notified of the application, including notification of a public hearing on the application. The Planning Department drafts a staff report regarding the application. All materials are forwarded to the Hearing Examiner, who holds a public hearing on the matter, evaluates the evidence and renders his or her decision on the application.

It is important to determine the type of review that will be necessary for marijuana retailers, if allowed in the M-1 zone, and to be consistent with the other required reviews for retail uses in that zone.

Current local marijuana regulations also require the following of all retailers:

All buffer zones required by state law be followed.

Child care center buffer zones include buffers from family home child care centers.

All state laws must be followed.

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 retailer shall be located on a single parcel.

Odor must be contained in retailers so that it cannot be detected by a person with a normal sense of smell from any abutting use or property.

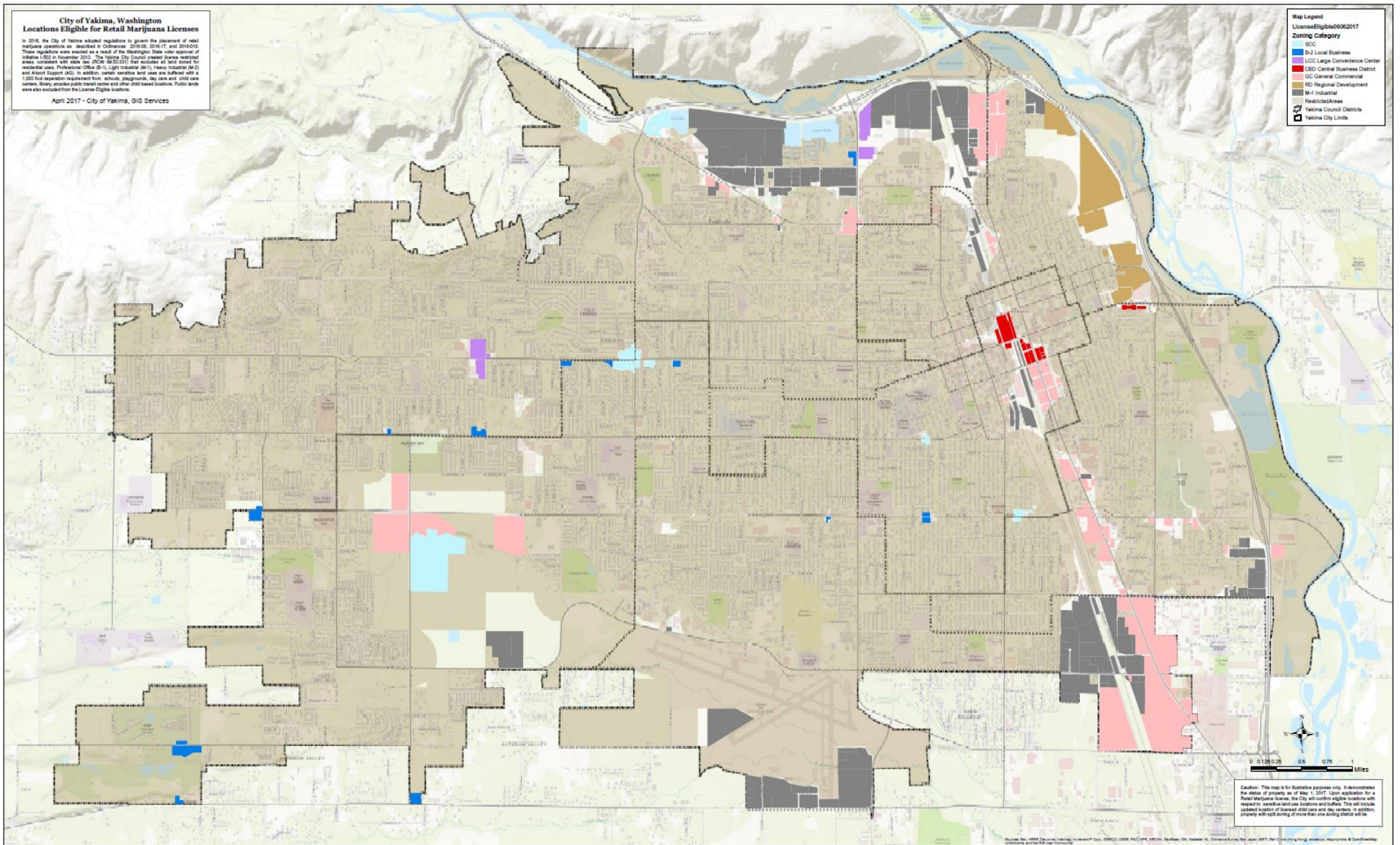
Meet all notice requirements as outlined in local and state law.

Attached is the map which was reviewed by the Planning Commission. The areas in dark grey are those which would be open to marijuana retail activities if the Council adds the M-1 district to the list of districts where marijuana retailers are allowed to operate. As can be seen, the majority of these parcels are along South Street, Fruitvale Boulevard, and the airport.

Attached also find the original letter requesting the evaluation of adding the M-1 zone to the available zones for marijuana retailers, as well as an email comment on the matter.

If the Council determines that it would like to make changes to allow marijuana retail activities in the M-1 zone (and what type of review will be necessary) it will need to set a public hearing on the matter before taking any action. The Planning Commission did not set a public hearing because it chose to take no action. Before any changes to the ordinance can be made, a public hearing must be held.

Map of License Eligible Properties with M-1 added



SCC: 53 parcels

B-2: 33 parcels

LCC: 15 parcels

CBD: 55 parcels

GC: 300 parcels

RD: 35 parcels

M-1: 369 parcels

Total: 860 parcels

RECEIVED
CITY OF YAKIMA

APR 26 2017

OFFICE OF CITY COUNCIL

April 26, 2017

Mayor, City Council members
City Manager
Yakima WA

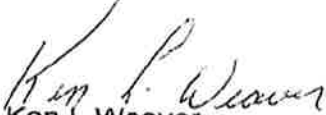
Dear City Officials,

The restrictions placed on I-502 locations eliminate most of the sites available to standard retail businesses. But as I testified the last time I was in front of the council, I agree with the setbacks currently in place in Yakima.

Over the past several months I have conducted an exhaustive search for a qualifying site to locate my I-502 Marijuana Retail license. I finally have a site that meets all the setback requirements, but the M-1 zoning is currently not on the list of allowable zones to locate a retail business in. I am looking at 1107 So 3rd, this is the old Max's Tavern property. This is a derelict property that we will turn into a show piece given the opportunity.

So I would like to request that the Council consider expanding the allowable I-502 retail zones to include M-1. I am available to answer questions any time.

Thank You


Ken L. Weaver
The Slow Burn
509 961-6719

RECEIVED

APR 27 2017

CITY OF YAKIMA
PLANNING DIV

From: Cutter, Jeff
Sent: Thursday, August 03, 2017 9:57 AM
To: Watkins, Sara <Sara.Watkins@YAKIMAWA.GOV>
Subject: FW: Planning/city council comments

FYI Sara. JC

Jeffrey R. Cutter
City Attorney

City of Yakima Legal Department
200 South Third Street 2nd Fl | Yakima WA 98901
P: 509.575.6030 | F: 509.575.6160
jeff.cutter@yakimawa.gov

Privileged & Confidential: Covered by the Attorney-Client & Attorney Work Product Privileges

From: Elizabeth Hallock [<mailto:ehallock.law@gmail.com>]
Sent: Wednesday, August 02, 2017 8:39 PM
To: Davenport, Joan <Joan.Davenport@yakimawa.gov>
Cc: Cutter, Jeff <Jeff.Cutter@yakimawa.gov>
Subject: Planning/city council comments

Hi,

I tried to leave a comment for the Aug 1 council meeting, but the website does not have a link to email a copy for public comments, only an all council email.

I would like to leave a comment regarding marijuana zoning for the next planning committee meeting.

It was very difficult under the city's zoning to open a marijuana business, and Ken Weaver spoke in public council meetings about how we need to protect the children by increasing the buffer zone. The most restrictive zoning resulted in the Herbery's Nob Hill business being zoned out for marijuana use.

I believe zoning light industrial as marijuana retail friendly is illegal spot zoning for the benefit of one individual. If zoning is to be revisited, the buffers need to be decreased for everyone. It's unfair that all the other Yakima marijuana business owners had restrictive zoning, but an exception is now being made for Ken Weaver.

Thanks

Liz Hallock
ehallock.law@gmail.com
3609096327