



City of Tacoma
Planning and Development Services

Agenda Item
D-3

To: Planning Commission
From: Lihuang Wung, Planning Services Division
Subject: **Marijuana Use Buffer Interim Regulations**
Meeting Date: June 21, 2017
Memo Date: June 15, 2017

The City Council adopted Resolution No. 39742 on June 6, 2017, requesting the Planning Commission to consider amending the Tacoma Municipal Code, relating to the zoning of marijuana uses, on an interim basis, by adding local definitions of “Playground” and “Recreation center or facility”, in order to protect Metro Parks Tacoma-owned playgrounds and recreation centers and facilities to the level intended by the state, but currently not covered by state definitions.

At the meeting on June 21, 2017, the Commission will review the Council’s request and associated background information and determine the path forward. Specifically, the Commission will review the following materials, as attached herein:

1. Resolution No. 39742, June 6, 2017, initiating the interim regulations process;
2. Council Consideration Request (CCR), Deputy Mayor Robert Thoms, May 4, 2017, requesting the Council to consider marijuana code amendment;
3. Memo from the City Attorney’s Office to the City Manager, May 1, 2017, calling out the issue and the need for amending the code; and
4. Project Schedule, June 15, 2017, representing a viable option for the path forward.

If you have any questions, please contact me at (253) 591-5682 or lwung@cityoftacoma.org.

Attachments (4)

c. Peter Huffman, Director



RESOLUTION NO. 39742

1 BY REQUEST OF DEPUTY MAYOR THOMS

2 A RESOLUTION relating to interim zoning; requesting that the Planning
3 Commission consider amending Chapter 13.06 of the Tacoma Municipal
4 Code, relating to the zoning of marijuana uses, on an interim basis, by
5 adding local definitions of "Playground" and "Recreation center or facility,"
6 in order to protect Metro Parks Tacoma-owned playgrounds and
7 recreation centers and facilities to the level intended by the state, but
8 currently not covered by state definitions.

9 WHEREAS the City's marijuana land use regulations, as set forth in
10 Amended Ordinance No. 28361, adopted on May 24, 2016, and found at
11 Section 13.06.565 of the Tacoma Municipal Code, are barely a year old, and

12 WHEREAS Washington State's regulatory framework for licensing and
13 regulating the production, processing and retail sale of marijuana is also relatively
14 new, and

15 WHEREAS City staff has discovered a gap between the state's intent to
16 require greater setback buffers for public playgrounds and recreational centers and
17 facilities and the state's definitions for these sites, found at Washington
18 Administrative Code ("WAC") 314-55-010(24)-(27), and

19 WHEREAS this gap arises from the state's unintended omission of
20 "metropolitan parks districts" from the ownership paradigm in the WAC definitions
21 of "Playground" and "Recreation center or facility," and

22 WHEREAS the City understands that the state intends to correct this
23 omission in its definitions, but it may take some time to do so; in the meantime, the
24 City can prevent conflicts from arising in local permitting, as has already happened,
25 by adding these two definitions in the TMC on an interim basis, and
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WHEREAS adding local definitions into the City's marijuana regulations for
“Playground” and “Recreation center or facility” that include ownership by a
metropolitan parks district will alleviate the problems that have arisen in permitting
marijuana uses that appear to conform with the state definitions, but not with the
state’s intent, until such time as the state corrects its own definitions; Now,
Therefore,

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TACOMA:

That the City Council hereby requests that the Planning Commission
consider amending Chapter 13.06 of the Tacoma Municipal Code, relating to
Zoning, on an interim basis, by adding local definitions of “Playground” and
“Recreation center or facility” as shown in Exhibit “A” hereto, in order to protect
Metro Parks Tacoma-owned playgrounds and recreation centers and facilities to
the level intended by the state, but currently not covered by state definitions.

Adopted _____

Mayor

Attest:

City Clerk

Approved as to form:

Deputy City Attorney



EXHIBIT "A"

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13.06.565 Marijuana Uses.

A. Intent. In November 2012, Washington voters passed Initiative 502, which establishes precedent for the production, processing and retail sale of marijuana for recreational purposes. In April 2015, the state Legislature enacted two laws, 2SSB 5052 and 2E2SHB 2136. The new laws establish regulations for the formerly unregulated aspects of the marijuana system, establish a "medical marijuana endorsement" that allows licensed marijuana retailers to sell medicinal marijuana to qualifying patients and designated providers, and attempt to align these changes with the existing recreational system.

Pursuant to RCW 69.50, the State has adopted rules establishing a state-wide regulatory and licensing program for marijuana uses (WAC 314-55). It is therefore necessary for the City to establish local regulations to address such uses.

It is the intent of these regulations to ensure that such state-licensed uses are located and developed in a manner that is consistent with the desired character and standards of this community and its neighborhoods, minimizes potential incompatibilities and impacts, and protects the public health, safety and general welfare of the citizens of Tacoma.

Recognizing the voter-approved right to establish certain types of marijuana businesses, it is also the intent of these regulations to provide reasonable access to mitigate the illicit marijuana market and the legal and personal risks and community impacts associated with it.

B. Applicability. The provisions of this Section shall apply city-wide. The specific development standards provided in this Section shall be in addition to the zoning and development standards generally applicable to the proposed use and the relevant zoning district. All licensed marijuana uses are required to fully comply with the provisions of this Section.

1. No Marijuana use as regulated herein and in WAC 314-55, that existed prior to the enactment of Ordinance No. 28182 on November 5, 2013, shall be deemed to have been a legally established use or entitled to claim legal non-conforming status.

2. As of July 1, 2016, in accordance with state law, collective gardens are prohibited.

3. For purposes of this Section and the standards applicable to state-licensed marijuana uses, the terms and definitions provided in WAC 314-55 shall ~~generally~~ apply ~~unless the context clearly indicates otherwise~~ except for the following definitions:

(a) "Playground" means a public outdoor recreation area for children, usually equipped with swings, slides, and other playground equipment, owned and/or managed by a city, county, state, or federal government, or a metropolitan parks district.

(b) "Recreation center or facility" means a supervised center that provides a broad range of activities and events intended primarily for use by persons under twenty-one years of age, owned and/or managed by a charitable nonprofit organization, city, county, state, or federal government, or a metropolitan parks district.



**CITY OF TACOMA, WASHINGTON
OFFICE OF THE CITY COUNCIL
COUNCIL CONSIDERATION REQUEST (CCR)**

TO: Mayor & City Council
FROM: Deputy Mayor Thoms and Council Assistant Brad Forbes
COPIES TO: Elizabeth Pauli, Acting City Manager; Mark Lauzier, Assistant City Manager;
Bill Fosbre, Acting City Attorney; Executive Leadership Team; File
SUBJECT: Marijuana uses buffer
DATE: May 4, 2017

ITEM/ISSUE PROPOSED FOR COUNCIL CONSIDERATION:

I ask for your support for the inclusion of the following item on the agenda at the earliest available meeting of the Study Session:

I respectfully ask the City Council to amend the City of Tacoma's marijuana regulation ordinance to include Metropolitan Park District parks, recreation centers, facilities, and playgrounds in the 1,000 foot buffer zone for marijuana uses.

BRIEF BACKGROUND:

It is clear from the relevant statutes and regulations (RCW 69.50.331(8) (a) and (b) and WAC 314-55-050(10)-(11)) that the State Legislature and the Washington State Liquor and Cannabis Board intended public playgrounds to be in a class of uses having the highest level buffer from marijuana uses. The buffer for parks, recreation centers, and facilities can be reduced, but the City's ordinance is presently unclear about any such reduction. The gap for playgrounds arises from the State's failure to include playgrounds (and recreation centers and facilities) owned by a metropolitan parks district in its definitions.

FUNDING REQUESTED:

This action does not require any funding.

If you have any questions related to the Council Consideration Request, please contact Brad Forbes at 253-591-5166 or bforbes@cityoftacoma.org.

SUBMITTED FOR COUNCIL CONSIDERATION BY: _____
Deputy Mayor Thoms

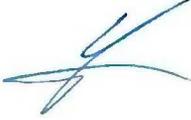
SUPPORTING COUNCILMEMBERS SIGNATURES (2 SIGNATURES ONLY)

(Signatures demonstrate support to initiate discussion and consideration of the subject matter by City Council for potential policy development and staff guidance/direction.)



1. _____

Mayor



2. _____

POS# 7



TO: Interim City Manager, Elizabeth A. Pauli
PDS Director, Peter Huffman

FROM: Jeff Capell, Deputy City Attorney *JAC*
Bill Fosbre, Acting City Attorney *BF*

SUBJECT: Marijuana Regulation; "Playground" Definition

DATE: May 1, 2017

Given the relative newness of the State's marijuana regulations, there was bound to be some glitches and gaps in their implementation. The City has become well acquainted with one of these in the form of the Washington Administrative Code ("WAC") definition of "playground." By way of background, it is clear from applicable statutes and regulations¹ that the State Legislature and the Washington State Liquor and Cannabis Board (the "Board") intended public playgrounds to be in a class of uses having the highest level of buffer protection from marijuana uses. By comparison, the buffer for other uses, such as a public transit center or library, can be reduced by local ordinance anywhere from 999 feet down to a minimum of 100 feet potentially. It should also be noted that the State has very clear preemptive authority when it comes to marijuana regulation.²

The gap presently at issue arises from the State's failure to include playgrounds owned by a metropolitan park district in its definition of "playground" at WAC 314-55-010 (25). In contrast, the State's definition of "park" does account for ownership by a metropolitan park district ("MPD").³ The State does not consider parks and playgrounds to be mutually exclusive. In other words, a given facility could be both a park and a playground depending on whether facilities indicative of both are present.

In discussions with the Board and its legal counsel, the Board represented that its omission of MPDs from ownership in the "playground" definition was unintentional and that the Board will most likely correct that omission in its next round of rulemaking. This correction will likely not happen until sometime after the current legislative session is complete. In the meantime, by letter dated February 22, 2017, the Board has suggested that the City may want to submit a petition for amendment of the playground definition

¹ e.g. RCW 69.50.331(8) (a) and (b) and WAC 314-55-050(10)-(11).

² RCW 69.50.608, titled "State preemption."

³ WAC 314-55-010(24).

more formally under RCW 34.05.330 titled "Petition for adoption, amendment, repeal—Agency action—Appeal."

On a more immediate stage, the City has had one variance application for a marijuana production facility within 1,000 feet of a MDS owned playground that was (1) first denied by the PDS Director for lack of authority, (2) then reversed by the Hearing Examiner, (3) thereafter granted by the PDS Director, only to (4) be denied for licensing by the State (all referred to as the "Gosselin App"). According to the variance applicant, Tim Gosselin, the State's denial stated that the City has no authority to grant a variance for the subject location for marijuana production,⁴ which brought the Gosselin App full circle.⁵ The City now has another, similar variance application pending for a location within 1,000 feet of a MPD playground/park combo. It is unlikely that the State will grant a license for this location given the result in the Gosselin App, regardless of how the City handles the variance application.

In the Hearing Examiner decision on the Gosselin App, the Hearing Examiner recognized the Board's admission that it inadvertently omitted MPDs from the playground definition, and the incongruity that omission created with the stated intent to provide greater protection to playgrounds. That notwithstanding, she concluded that she had to follow the language of the "playground" definition as written and reversed the PDS Director's denial of the variance. She did suggest in her decision that the City could amend its own ordinance to include MPD playgrounds in the 1,000 foot buffer zone in advance of any amendment by the State. Given that the State has refused to license the marijuana use at Gosselin's property, it would make sense to amend the TMC in this manner in order to not perpetuate the disconnect between the City and the Board's approach that exists at present.

At the suggestion of the Board, the City has, by letter, already requested that the Board fix the definition of playground to include expressly those owned by Metro Parks Tacoma, our local MPD. Unless there is a valid reason to differentiate, the same fix should be requested for the definition of "Recreation center or facilities," which also does not account for ownership by a MPD. Examples of "Recreation center or facilities" in Tacoma owned by Metro Parks Tacoma would include the Star Center, the Center at Norpoint, and the Portland Ave. Community Center.

Please feel free to call me with any questions or concerns.

⁴ The subject location is within 1,000 feet of MPD owned Irving Park, which according to the State, is both a park and a playground.

⁵ It is fairly apparent that the State does not believe a variance to be an appropriate vehicle for reducing buffers, as opposed to having an across-the-board reduction written into the local code.



MARIJUANA INTERIM REGULATIONS

PROPOSED AMENDMENTS TO THE LAND USE REGULATORY CODE

SCHEDULE

(As of June 15, 2017)

Color Keys:

City Council
Planning Commission
Staff

Date	Actions
June 6, 2017	City Council – Resolution No. 39742 requesting the Planning Commission to consider amending TMC 13.06.565.B.3 on an interim basis.
June 21	Planning Commission – Review Council’s request and the scope of work for developing the interim regulations
June 27	Stakeholder Notification – Send letters to all existing and potential marijuana businesses on record, notifying them of the Planning Commission’s meeting on July 19 when a recommendation is expected.
July 19	Planning Commission – Develop findings and recommendations, recommending enacting interim regulations for one year, with the work plan being to follow up on the State’s plan to revise the definition.
July 25	City Council – Resolution to set a public hearing on August 8
July 26	Stakeholder Notification – Send notice and letters to all existing and potential marijuana businesses on record, notifying them of the City Council’s public hearing
August 8	City Council – Public Hearing on the Interim Regulations and the Planning Commission’s findings of fact and recommendations
August 15	City Council – First reading of ordinance adopting Commission’s findings and recommendations and interim regulations.
August 22, 2017	City Council – Final reading of ordinance (effective immediately, for one year, through August 21, 2018)