

Cannabis Business Blog

Shrinking Buffer Zones? Municipalities Now Have Discretion to Decrease the 1,000 Foot Requirement

By Emily Gant on 1.20.16 | Posted in Marijuana business owners, Marijuana retailers, Marijuana-related Business, Medical marijuana, Washington State

Looking for a location for a licensed marijuana premises? Changes to the buffer zone requirements may be headed to your fair city.

Previously, the Washington State Liquor and Cannabis Board (“LCB”) would not issue a license for any premises within one thousand (1,000) feet of various sensitive uses, namely, elementary or secondary schools; playgrounds; recreational centers or facilities; child care centers; public parks; public transit centers; libraries; or game arcades admitting minors. RCW 69.50.331(8) (2013).

This requirement caused headaches for many applicants, as they scrambled to find compliant locations. This was particularly true for retailers in larger cities, where much of the prime real estate was near a public transit center, by a public park, or otherwise within the 1,000 foot buffer zone.

These problems will likely compound. To accommodate the alignment of the medical and recreational systems, the LCB recently [adopted emergency rules](#) increasing the number of permissible retail licenses from 334 to 556. This means that there will be greater competition for locations that meet the buffer zone requirements.

Changes to the buffer zone rules may alleviate some of these concerns. Effective July 24, 2015, municipalities have discretion to decrease the buffer zone. Cities, counties, or towns may enact ordinances authorizing buffer zones between one hundred (100) and one thousand (1,000) feet for the sensitive uses identified above, except for elementary schools, secondary schools, and playgrounds. RCW 69.50.331(8)(b). Note that the distance reduction cannot negatively impact the municipality’s civil regulatory enforcement, criminal law enforcement interests, public safety, or public health.

Seattle is the first major Washington city to decrease the buffer zones. The Seattle City Council voted on Monday, January 11, 2016, to reduce the 1,000 foot buffer zone. [Ordinance 124969](#). Subject to zoning restrictions, the buffer zones for producers and processors are now 250 feet. For retailers, the buffer zones are now 250 feet downtown, and 500 feet elsewhere in the city.

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Regardless, there can be no more than two retailers within 1,000 feet of each other, with an exception for existing retailers.

To date, other major cities have not taken advantage of the new buffer zone rules. Indeed, Tacoma recently issued a temporary, six-month moratorium on new retail marijuana stores and medical cooperatives in the city. [Substitute Ordinance No. 28343](#). Among other things, the Tacoma City Council cited the need for further review by the Planning Commission.

For more information about Tacoma's moratorium, please see our previous blog post, "[Tacoma Passes Moratorium on New Retail Stores, Medical Cooperatives](#)".

Warning Regarding Federal Law: The possession, distribution, and manufacturing of marijuana is illegal under federal law, regardless of state law which may, in some jurisdictions, decriminalize such activity under certain circumstances. Penalties for violating federal drug laws are very serious. For example, a conviction on a charge of conspiracy to sell drugs carries a mandatory minimum prison term of five years for a first offense and, depending on the quantity of marijuana involved, the fine for such a conviction could be as high as \$10 million. In addition, the federal government may seize, and seek the civil forfeiture of, the real or personal property used to facilitate the sale of marijuana as well as the money or other proceeds from the sale. Although the U.S. Department of Justice (DOJ) recently rescinded its guidance regarding prioritization of criminal prosecutions of individuals and entities operating in compliance with effective state regulatory systems, DOJ left in place long standing guidance to federal prosecutors regarding how to exercise this discretion. Individuals and companies are cautioned to consult with experienced attorneys regarding their exposure to potential criminal prosecution before establishing business operations in reliance upon the passage of state laws which may decriminalize such activity. Federal authority to prosecute violations of federal law as crimes or through seizures and forfeiture actions is not diminished by state law. Indeed, due to the federal government's jurisdiction over interstate commerce, when businesses provide services to marijuana producers, processors or distributors located in multiple states, they potentially face a higher level of scrutiny from federal authorities than do their customers with local operations.

Tags: buffer zone, emergency rules, LCB, license, medical cooperatives, moratorium, Ordinance 124969, retail licenses, retail marijuana stores, Substitute Ordinance No. 28343, Tacoma, Tacoma City Council, Washington State Liquor and Cannabis Board