

Cannabis Business Blog

Check Your Local Zoning and Land-Use Ordinances

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The Washington State Liquor and Cannabis Board (“WSLCB”) recently issued a declaratory order (Order No. 01-2017) finding that the WSLCB is not required to determine that an applicant for a marijuana license is in compliance with all local zoning and land use ordinances prior to granting a license for a marijuana business. Accordingly, applicants and licensees should continue to check with their local jurisdiction to understand the jurisdiction’s zoning and land use regulations. Absent such confirmation, it is possible that an applicant could receive a marijuana license from WSCLB but not be able to operate in its WSLCB-approved location due to a local jurisdiction’s zoning or land use ordinances.

In its request for a declaratory order, Kittitas County requested that the WSLCB determine whether the WSLCB may only issue a marijuana license when the application and/or location complies with local zoning and land use requirements. In its declaratory order, the WSLCB stated that it is not required to confirm whether an applicant or licensee complies with local land use or zoning ordinances. The WSLCB reasoned that if it denied a licensed based solely on a local ordinance, the WSLCB would effectively be in the position of interpreting and defending the local ordinance, which could be a form of enforcement outside of its scope of authority. WSLCB explained that it is simply not in the best position to determine whether land use or zoning ordinances apply to a particular license applicant.

WSLCB further clarified that even if it issues a marijuana license, a local jurisdiction may still apply its local ordinances to deny a licensee a business license or other permit required to operate its marijuana business. Finally, WSLCB also relied on the fact that it gives notice to local jurisdictions if it grants a license over the objection of a local authority. This notice allows the local jurisdiction to contact the applicant/licensee directly about possible conflicts with local ordinances.

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

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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: jurisdiction's zoning and land use regulations, local zoning and land use ordinances, marijuana license, Washington State Liquor and Cannabis Board, WSLCB