

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:

An Ordinance establishing a limit on the number of retail marijuana stores in the City of Everett, and amending Ordinance No. 3443-15

_____	Briefing
_____	Proposed Action
_____	Consent
_____	Action
<u>3/2/16</u>	First Reading
<u>3/9/16</u>	Second Reading
<u>3/16/16</u>	Third Reading
<u>3/16/16</u>	Public Hearing

COUNCIL BILL #	<u>CB1602-11</u>
Originating Department	<u>Planning</u>
Contact Person	<u>Allan Giffen</u>
Phone Number	<u>(425) 257-8725</u>
FOR AGENDA OF	<u>March 2, 2016</u>
	<u>March 9, 2016</u>
	<u>March 16, 2016</u>

Initialed by:
 Department Head _____
 CAA alg
 Council President AG

<u>Location</u> City-wide	<u>Preceding Action</u> Planning Commission recommendation March 1, 2016	<u>Attachments</u> Proposed Ordinance	<u>Department(s) Approval</u> Planning, Legal
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Amount Budgeted	-0-	
Expenditure Required	-0-	Account Number(s):
Budget Remaining	-0-	
Additional Required	-0-	

DETAILED SUMMARY STATEMENT:

In the 2015 legislative session, the Washington State Legislature adopted legislation to combine the medical marijuana and recreational marijuana laws as they relate to retail establishments. As a result of this change, the State Liquor and Cannabis Board is proposing new regulations for retail marijuana stores and marijuana cooperatives, including the number of retail establishments that will be allowed in each city or county.

Under the previous rule, Everett is allowed to have a maximum of five stores. Under the new regulations, Everett would be allowed to have up to ten stores. There are four stores currently operating in the City; a fifth is in the permit process.

On March 1, 2016, the Planning Commission held a public hearing to consider allowing at least five, but potentially less than a total of ten stores in Everett.

RECOMMENDATION (Exact action requested of Council):

Adopt Ordinance establishing a limit on the number of retail marijuana stores in the City of Everett, and amending Ordinance No. 3443-15.

ORDINANCE NO. ____

**An Ordinance establishing a limit on the number of retail marijuana stores
in the City of Everett, and amending Ordinance No. 3443-15**

Whereas, the City Council finds the following:

1. State Initiative 502 (“I-502”), approved by Washington voters in November 2012, provides a framework for licensing and regulating the production, processing and retail sale of recreational marijuana.
2. In July 2015, the City adopted land use regulations based on available information at the time in order to provide policy and regulatory guidance and facilitate the review of recreational marijuana license applications within City limits.
3. The State Legislature enacted the Cannabis Patient Protection Act in 2015, establishing regulations for the formerly unregulated medical marijuana system and aligning it with the existing recreational system.
4. In response to changes in state law adopted in the last legislative session, the State Liquor and Cannabis Board has amended its rules on the number of retail marijuana stores to be allowed in each municipality and has determined that the maximum number of retail marijuana stores to be allowed in Everett shall increase from five to a total of ten.
5. The City Council has asked the Planning Commission to consider establishing a limit on the number of marijuana retail stores, including whether the number should be limited to five stores, if ten stores should be allowed, or if a number between five and ten stores is an appropriate number of retail marijuana stores in the City of Everett.
6. There are four retail marijuana stores currently in business in Everett and a fifth is approved and will soon in open for business.
7. There are many retail marijuana stores located in the unincorporated area of Snohomish County located south of the Everett city limits.
8. Many cities in Washington, including cities in parts of Snohomish County surrounding Everett, have enacted a total ban on the establishment of recreational marijuana retail stores and production and processing facilities.
9. Washington courts have upheld the rights of municipalities to ban or exclude recreational marijuana land uses within their local land use regulations.
10. The existing marijuana retail stores in Everett will be permitted by the State Liquor and Cannabis Board to provide marijuana to medical marijuana patients.

Whereas, the City Council concludes that:

1. The City Council held a public hearing on the Ordinance on March 16, 2016.
2. Cities have the right to either ban or to establish limits on the number of marijuana stores in their municipal limits.

NOW, THEREFORE, THE CITY OF EVERETT DOES ORDAIN:

Section 1: FINDINGS OF FACT. The “WHEREAS’ provisions above shall constitute Findings of Fact and are incorporated by reference as if fully set forth herein.

Section 2: Section 2.C of Ordinance No. 3443-15, which reads as follows:

- C. **Retailers:** Marijuana retailers may operate in the City pursuant to the following restrictions:
1. Marijuana retailers must comply with all requirements of state law, Washington State Liquor Control Board and the City;
 2. Marijuana retailers may locate only within the B-2, B-3, BMU, C-1, C-1R, C-2, E-1, E-1MUO, and M-2 zones;
 3. Marijuana retailers may not locate in Neighborhood Business (B-1) zones;
 4. Marijuana retailers may not locate in a building in which non-conforming retail uses have been established in residential zones (R-S, R-1, R-1(A), R-2, R-2(A), R-3, R-3(L), R-4, and R-5 zones);
 5. Marijuana retailers may not locate within 1,000 feet of any parcel containing an 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;
 6. Marijuana retailers may not locate within 2,500 feet of any other legally established marijuana retailer;
 7. Customer parking for marijuana retailers must be on the public street side of the structure in which the marijuana retailer is located and may not be off of or adjacent to an alley. However, staff parking and business deliveries may occur on the alley side of the structure;
 8. Vehicular access to the parking lot for a marijuana retailer shall be from the public street frontage and may not be from an alley. Any property located on a street from which vehicular access to the site from the street is prohibited by the City Engineer shall not be allowed for use as a marijuana retailer;
 9. Marijuana retailers shall not be allowed on any parcel containing a residential use;

10. Marijuana retailers shall not be allowed on any parcel that is contiguous to a parcel containing residential use, unless the Planning Director, using Review Process II as described in EMC Title 15, finds the following:
 - a. There is a physical separation between the two uses, such as another commercial building, or a substantial change in topography;
 - b. The retail use is located in a shopping center as one of multiple tenants with adequate parking for all uses and access as stated above;
 - c. The building in which the retail use is located faces the commercial street and the residential use faces a residential street in the opposite direction, without a shared alley between the two;
 - d. The residential use is located at least 100 feet from the common lot line between the two uses.
11. In reviewing a proposed marijuana retailer under this section, the Planning Director shall have the authority to require improvements including, but not limited to fencing or landscaping to screen the retail use from the residential use.
12. The front façade of retail stores shall consist of storefront window(s), doors, and durable, quality building materials consistent with the design standards of the zone in which the property is located. Transparency requirements for windows shall apply unless in conflict with Washington State Liquor and Cannabis Board regulations. If located in a zone without design standards, at least three of the following shall be provided:
 - a. Special treatment of windows and doors, other than standard metal molding/framing details, around all ground floor windows and doors, decorative glazing, or door designs.
 - b. Decorative light fixtures with a diffuse visible light source or unusual fixture.
 - c. Decorative building materials, such as decorative masonry, shingle, brick, or stone.
 - d. Individualized patterns or continuous wood details, decorative moldings, brackets, trim or lattice work, ceramic tile, stone, glass block, or similar materials.
 - e. Use of a landscaping treatment as part of the building's design, such as planters or wall trellises.
 - f. Decorative or special railings, grill work, or landscape guards.
 - g. Landscaped trellises, canopies, or weather protection.
 - h. Sculptural or hand-crafted signs.
 - i. Special building elements, such as pilasters, entablatures, wainscots, canopies, or marquees that exhibit nonstandard designs.
 - j. Other similar features or treatment that satisfies the intent of the guidelines as approved by the City.

Is hereby amended to read as follows:

- C. **Retailers:** Marijuana retailers may operate in the City pursuant to the following restrictions:
1. Marijuana retailers must comply with all requirements of state law, Washington State Liquor Control Board and the City;
 2. Marijuana retailers may locate only within the B-2, B-3, BMU, C-1, C-1R, C-2, E-1, E-1MUO, and M-2 zones;
 3. Marijuana retailers may not locate in Neighborhood Business (B-1) zones;
 4. Marijuana retailers may not locate in a building in which non-conforming retail uses have been established in residential zones (R-S, R-1, R-1(A), R-2, R-2(A), R-3, R-3(L), R-4, and R-5 zones);
 5. Marijuana retailers may not locate within 1,000 feet of any parcel containing an 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;
 6. Marijuana retailers may not locate within 2,500 feet of any other legally established marijuana retailer;
 7. Customer parking for marijuana retailers must be on the public street side of the structure in which the marijuana retailer is located and may not be off of or adjacent to an alley. However, staff parking and business deliveries may occur on the alley side of the structure;
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 9. Marijuana retailers shall not be allowed on any parcel containing a residential use;
 10. Marijuana retailers shall not be allowed on any parcel that is contiguous to a parcel containing residential use, unless the Planning Director, using Review Process II as described in EMC Title 15, finds the following:
 - a. There is a physical separation between the two uses, such as another commercial building, or a substantial change in topography;
 - b. The retail use is located in a shopping center as one of multiple tenants with adequate parking for all uses and access as stated above;
 - c. The building in which the retail use is located faces the commercial street and the residential use faces a residential street in the opposite direction, without a shared alley between the two;

- d. The residential use is located at least 100 feet from the common lot line between the two uses.
11. In reviewing a proposed marijuana retailer under this section, the Planning Director shall have the authority to require improvements including, but not limited to fencing or landscaping to screen the retail use from the residential use.
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- a. Special treatment of windows and doors, other than standard metal molding/framing details, around all ground floor windows and doors, decorative glazing, or door designs.
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 - c. Decorative building materials, such as decorative masonry, shingle, brick, or stone.
 - d. Individualized patterns or continuous wood details, decorative moldings, brackets, trim or lattice work, ceramic tile, stone, glass block, or similar materials.
 - e. Use of a landscaping treatment as part of the building's design, such as planters or wall trellises.
 - f. Decorative or special railings, grill work, or landscape guards.
 - g. Landscaped trellises, canopies, or weather protection.
 - h. Sculptural or hand-crafted signs.
 - i. Special building elements, such as pilasters, entablatures, wainscots, canopies, or marquees that exhibit nonstandard designs.
 - j. Other similar features or treatment that satisfies the intent of the guidelines as approved by the City.

13. The maximum number of retail marijuana stores allowed in the City of Everett shall not exceed five. Provided, the City shall review the maximum number of retail marijuana stores allowed before June 1, 2018, to determine whether this maximum number should be changed.

Section 3. SEVERABILITY. Should any section, paragraph, clause or phrase of this Ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this Ordinance be pre-empted by State or federal law or regulations, this shall not affect the validity of the remaining portions of this Ordinance or its application to other persons or circumstances.

Section 4. CONFLICT. In the event there is a conflict between the provisions of this Ordinance and any other City ordinance, the provisions of this Ordinance shall control.

Section 5. CORRECTIONS. The City Clerk and the codifiers of this Ordinance are authorized to make necessary corrections to this Ordinance including, but not limited to, the correction of scrivener's/clerical errors, references, ordinance numbering, section/subsection number and any references thereto.

Section 6. GENERAL DUTY. It is expressly the purpose of this Ordinance to provide for and promote the health, safety and welfare of the general public and not to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by the terms of this Ordinance. It is the specific intent of this Ordinance that no provision or any term used in this Ordinance is intended to impose any duty whatsoever upon the City or any of its officers or employees. Nothing contained in this Ordinance is intended nor shall be construed to create or form the basis of any liability on the part of the City, or its officers, employees or agents, for any injury or damage resulting from any action or inaction on the part of the City related in any manner to the enforcement of this Ordinance by its officers, employees or agents.

RAY STEPHANSON, MAYOR

ATTEST: _____

CITY CLERK

Passed: _____

Valid: _____

Published: _____

Effective Date: _____