



CITY OF KIRKLAND
Planning and Community Development Department
123 Fifth Avenue, Kirkland, WA 98033
425.587-3225 - www.kirklandwa.gov

MEMORANDUM

To: Kurt Triplett, City Manager

From: Eric Shields, Planning Director
Paul Stewart, Deputy Planning Director
Robin Jenkinson, City Attorney

Date: January 23, 2014

Subject: Marijuana Interim Zoning Regulations

RECOMMENDATION

After conducting a public hearing, the City Council determines whether to approve the attached Ordinance which would prohibit the retail sale of recreational marijuana in the Market Street Corridor (MSC) 1 and/or MSC 2 Zones for a period of six months.

BACKGROUND DISCUSSION

Council Direction

On January 21, 2014, the City Council reviewed a number of options for regulating the sale of recreational marijuana in Kirkland's commercial zones. Following a lengthy discussion, the Council directed that interim regulations be prepared for consideration, following a public hearing, at its February 4, 2014 meeting. The Council initially focused on prohibiting marijuana sales in only the MSC 1 Zone, which extends along Market Street from 8th Avenue to 19th Avenue. However, in response to community concerns, the Council asked that the interim regulations also provide the option of prohibiting marijuana sales in the MSC 2 Zone, a small retail center located on the west side of Market Street between 14th Avenue West and 16th Avenue West. A map showing the location of the MSC 1 and MSC 2 Zones is included as Attachment 1. The question has been raised as to whether the MSC 3 or MSC 4 Zones should also be included in the interim regulations. Staff does not feel that is necessary because under the current state regulations both MSC 3 and MSC 4 are within 1000 feet of active parks (either Heritage Park or Tot Lot Park) and therefore no marijuana retail sales are allowed.

The interim regulations are drafted to prohibit marijuana sales in both MSC 1 and MSC 2 Zones. Should the Council determine that it wishes to have the prohibition against retail marijuana sales apply to only the MSC 1 Zone, a motion could be made to strike references to the MSC 2 Zone throughout the Ordinance. Similarly, if the Council desires to prohibit marijuana sales in additional Zones, a motion could be made to add a particular Zone throughout the Ordinance.

State Regulations

The Washington State Liquor Control Board (WSLCB) is now reviewing applications for the sale, processing and production of recreational marijuana legalized by Initiative 502. The WSLCB has indicated that it will issue licenses for only two marijuana retailers in Kirkland. WSLCB rules prohibit licenses from being issued to marijuana businesses within 1,000 feet of public parks,

elementary and secondary schools, state licensed child care centers and public transit centers. After further review of the regulations, staff would note that the WSLCB does not apply the restriction to all public parks, only those with facilities for active uses, such as ball fields and playgrounds. Therefore, under the WSLCB definition, the proximity of the Bridle Trails Shopping Center (BCX Zone) to Snyder's Corner Park likely does not preclude licensed marijuana retailers at the shopping center or in the BN zone just to the northeast of the shopping center. However, it is up to the WSLCB to interpret its rules and definitions.

Local Regulations

The City Council previously determined that existing zoning regulations would control and marijuana businesses would be restricted to locations where retailing, processing and production are allowed by the Zoning Code. However, a recently issued opinion from the State Attorney General's Office concludes that Initiative 502 does not prevent local jurisdictions from adopting special regulations for recreational marijuana businesses or even outright prohibiting marijuana businesses. The proposed interim Ordinance is consistent with the Attorney General's guidance.

Attachments 4A – 4D show the locations of marijuana license applications, other than along Market Street, which appear to meet both City zoning requirements and the WSLCB required 1000 feet separation from active public parks, elementary and secondary schools, state licensed child care centers and public transit centers.

Interim Regulations

Under RCW 35A.63.220 and RCW 36.70A.390, the City Council must adopt findings of fact that support the adoption of interim regulations. Section 1 of the proposed ordinance includes findings of fact for the Council's consideration. If desired, the Council may amend the findings of fact prior to adopting the Ordinance.

The interim regulations are limited to a duration of six months. During that time, the expectation is that the City will be working to prepare amendments to the Zoning Code. Prior to the expiration of the interim regulations, the City Council may, after conducting another public hearing, extend the interim regulations for another six months if a work plan is developed for such a longer period.

Letter to the WSLCB

At the January 21, 2014 meeting, the City Council reviewed a draft letter to the WSLCB. The Council directed some changes to the letter, which are reflected in Attachment 2. The letter is presented in track changes mode so that the Council can see the proposed edits. The letter was also revised to reflect the adoption of the interim regulations for both the MSC 1 and MSC 2 zones. If the Council does not adopt the interim regulations or adopts them only for one of the MSC zones, the letter will be amended accordingly.

SEPA Compliance

The adoption of interim regulations is subject to compliance with the State Environmental Policy Act (SEPA). A SEPA Determination of Nonsignificance was issued on January 27, 2014 and is included as Attachment 3.

Kirkland Support for I-502

The issue of Kirkland residents' support for I-502 was raised during the discussions. Staff has assembled the Kirkland election results regarding the Initiative from November of 2012. Overall the voters of Kirkland approved I-502 with a 62% yes vote. I-502 was approved by a majority of voters in every neighborhood in the city. The Highlands neighborhood had the highest percentage of approval with 68% and Kingsgate had the lowest approval percentage of 56%. The information is presented by each Kirkland neighborhood boundary in attachments 5 and 6. There is not an exact correlation between every precinct boundary and neighborhood boundaries but they are close enough to do the analysis. Attachment 5 shows the results by neighborhood in a table format. Attachment 6 shows the results by neighborhood in a GIS map format.

Attachments:

1. Map of the MSC1 and MSC 2 zones
2. Revised letter to the WSLCB
3. SEPA Determination of Nonsignificance
4. Locations of eligible marijuana applications
5. I-502 Approval Results by Neighborhood: Table
6. I-502 Approval Results by Neighborhood: Map

MSC 1 an MSC 2 Zones



Sharon Foster, Board Chair
 Ruthann Kurose, Board Member
 Chris Marr, Board Member
 Washington State Liquor Control Board
 P.O. Box 43085
 Olympia, WA 98504-0385

Subject: Comments on Marijuana Applications in Kirkland

Dear Liquor Control Board Members:

On behalf of the Kirkland City Council, I offer the following comments on applications submitted to the Washington State Liquor Control Board (WSLCB) for marijuana retail, processing and production licenses in Kirkland. The City is not opposed to having sd recreational marijuana uses within the City. ~~Our zoning regulations do not specifically address marijuana as a distinct use. Instead, marijuana businesses are allowed in those zones where retailing, processing or production is allowed.~~ Generally, the City's approach is to allow licensed marijuana businesses in land use zones where retailing, processing or production are otherwise allowed. The Council has enacted an interim ordinance prohibiting marijuana retailers in in one use zone. Retailer applications in this zone are listed below with applications that do not comply with zoning. Although we have the Council has chosen to prohibit the sale of marijuana in one predominantly residential area of the City, we are the Council is mindful of maintaining viable places where marijuana retailers, processors and producers may locate.

However, several of the Kirkland license applications are in locations where the zoning clearly does not allow the type of use proposed. In other locations, the zoning allows the use but the proposed sites are within 1,000 feet of public parks, elementary or secondary schools, state licensed child care centers or public transit centers. In addition, ~~there are some locations where the City Council has heard from citizens expressing strong opposition to the siting of marijuana retail facilities. There are also~~ a number of applications listing addresses of which we have no record that are nonexistent. This letter is intended to provide you with information about these issues.

The City objects to the following license applications which are in zones that do not allow retailing, production or processing:

License	Applicant	Address	Zoning Issue
412968	Blue Moose	6105 111 th Pl. NE	Producer in residential zone (RS 8.5 zone)
413915	Chad Grospe	1524 Market St.	Processor in office zone (MSC 1 zone)
412993	Think About It	11851 108 th Ave. NE	Producer in residential zone (RSX 7.2 zone)
413594	M Enterprise	11308 124 th Ave. NE	Retailer in office zone (NRH 3 zone)
414172	Organic Gardens	11014 120 th Ave. NE	Retailer in office zone (TL 10E zone)
414297	W & L Holdings	11509 Juanita Dr. NE	Retailer in a residential zone (RSA 8 zone)
053096	Seattle Cannabus Kitchens	6227 102 nd Pl NE	Producer & processor in residential zone (RSX 7.2 zone)
054638	Cameron Deak	11236 115 th Pl NE	Retailer in residential zone (RS 8.5 zone)

054386	Emerald City Bot.	10856 NE 108 th St.	Retailer in residential zone (RS 8.5 zone)
054499	The Garden LLC	11341 106 th Ave. NE	Retailer in residential zone (RS 8.5 zone)
054500	The Garden LLC		
053596	The Novel Tree	825 7 th Ave.	Retailer in industrial zone (LIT zone)
412927 054868 054759 413682 413252 413325	Biloxi Green Buzz U Fireplace Maison Botanique McCormick Green Mind's Eye	1818 Market St.	Retailers in a zone (MSC1) where marijuana sales prohibited by interim ordinance.
414063	Resolute Partners	1313 Market St.	Retailer in a zone (MSC1) where marijuana sales prohibited by interim ordinance
414401	Recreational Marijuana King	1431 Market St.	Retailer in a zone (MSC 2) where marijuana sales prohibited by interim ordinance
054035	Twisted Sacks Corp.	1417 Market St.	Retailer in a zone (MSC 2) where marijuana sales prohibited by interim ordinance

Consequently, the City Council requests that the WSLCB not issue retail licenses to properties in the MSC 1 Zone along Market Street and instead focus the licenses in other more clearly commercial locations. The following applications in the MSC 1 Zone are of concern to the City:

License	Applicant	Address	Comments
412927 054868 054759 413682 413252 413325	Biloxi Green Buzz U Fireplace Maison Botanique McCormick Green Mind's Eye	1818 Market St.	Located in an office zone, abutting residential neighborhoods, on school walk routes.
414063	Resolute Partners	1313 Market St.	

A number of applications for uses that would be allowed in the zone where they are proposed appear to be prohibited under RCW 69.50.331 and WAC 314-55-160(2) as the locations are within 1,000 feet of elementary or secondary schools, public parks, [state licensed](#) child care centers or transit facilities. Following are the applications in that category:

License	Applicant	Address
413826	Cema Investments	8520 122 nd Ave. NE
414073	Good News Everyone	12642 NE 85 th St.
414109	One Love Organics	12504 116 th Ave. NE
414172	Organic Gardens	
414479	THC4Less	12403 NE 124 th St
414469	Hector Degner	11901 124 th Ave. NE
054218	Okeemomo LLC	

Finally, the City has no record of the following addresses:

License	Applicant	Address	Comments
054326	Lester Farms	13600 NE 128 th St. Suite D	
051728	Leganjafairy LLC	13536 NE 126 th Pl.	

413184	Recreation Health & Exercise Consult.	14253 23 rd Ave. NE B-301	Appears to be Seattle address.
O54026	420 PM Corps	13100 NE 70th PI	
053742	Josh's Joint	13205 NE 124th St #124	
054037	Stoner Haze	6157 132nd Ave NE	
054500	The Garden LLC	11341 106th Ave NE Suite B	No record of suite number.

All other marijuana applications listed on the WSLCB web site appear to be located in appropriate zones and are more than 1,000 feet from public parks, elementary and secondary schools, child care centers and public transit centers. The City expresses no objections to issuing licenses for those applications.

Thank you for your consideration of these comments. We look forward to being informed of the applications that you select for final consideration.

Sincerely,

Kurt Triplett,
City Manager

cc: @

CITY OF KIRKLAND
123 FIFTH AVENUE
KIRKLAND, WA 98033-6189
425.587.3225



Determination Of Nonsignificance

CASE #: SEP14-00153

DATE ISSUED: January 27, 2014

DESCRIPTION OF PROPOSAL: Interim zoning ordinance prohibiting the retail sale of recreational marijuana as a permitted use in the Market Street Corridor MSC1 and MSC2 zones.

APPLICANT: City of Kirkland

PROJECT LOCATION: Market Street Corridor

LEAD AGENCY IS THE CITY OF KIRKLAND

The lead agency for this proposal has determined that it does not have a probable significant adverse impact on the environment. An environmental impact statement (EIS) is not required under RCW 43.21.030 (2) (c). This decision was made after review of a completed environmental checklist and other information on file with the lead agency. This information is available to the public upon request.

There is no comment period for this DNS.

Responsible Official:

Eric Shields, Director
Department of Planning and Community Development
425-587-3225

Date

Address:

City of Kirkland
123 Fifth Avenue
Kirkland, WA 98033-6189

You may appeal this determination to the Planning Department at Kirkland City Hall, 123 Fifth Avenue, Kirkland, WA 98033 no later than 5:00 p.m., February 10, 2014 by WRITTEN NOTICE OF APPEAL.

You should be prepared to make specific factual objections. Contact the Planning Department at 425-587-3225 to read or ask about the procedures for SEPA appeals.

Please reference case # SEP14-00153

Owner: City of Kirkland

cc: Case # PLN13-01363

Distributed By:

Date:

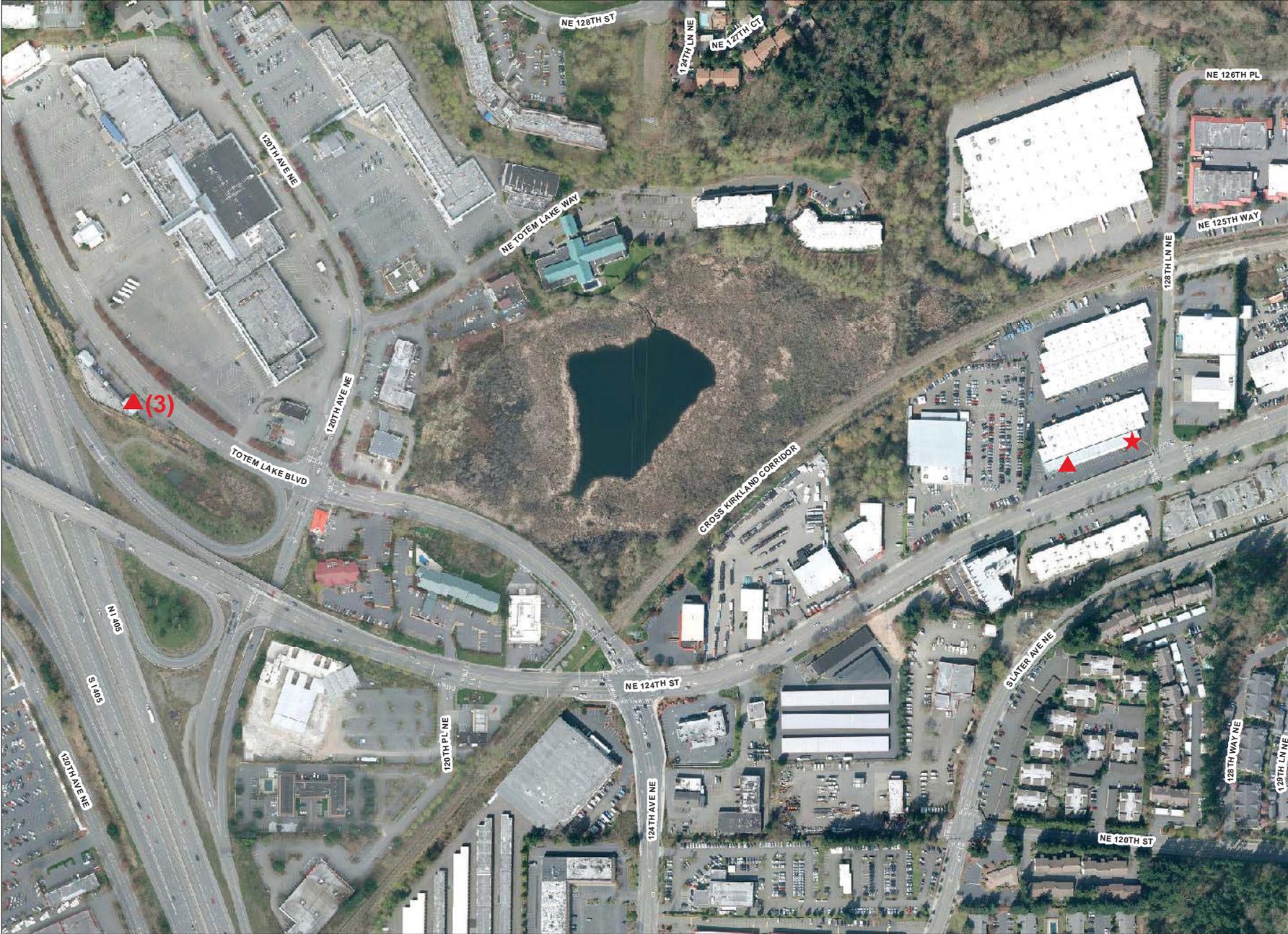
Eligible Marijuana License Applications Totem Lake (Eastern Portion)
(As of January 7, 2014)
Based on information obtained from the Washington State Liquor Control Board.



Type	
	Processor
	Producer
	Producer & Processor
	Invalid Address



Eligible Marijuana License Applications Totem Lake (Near Interchange)
(As of January 7, 2014)
Based on information obtained from the Washington State Liquor Control Board.



Application Type

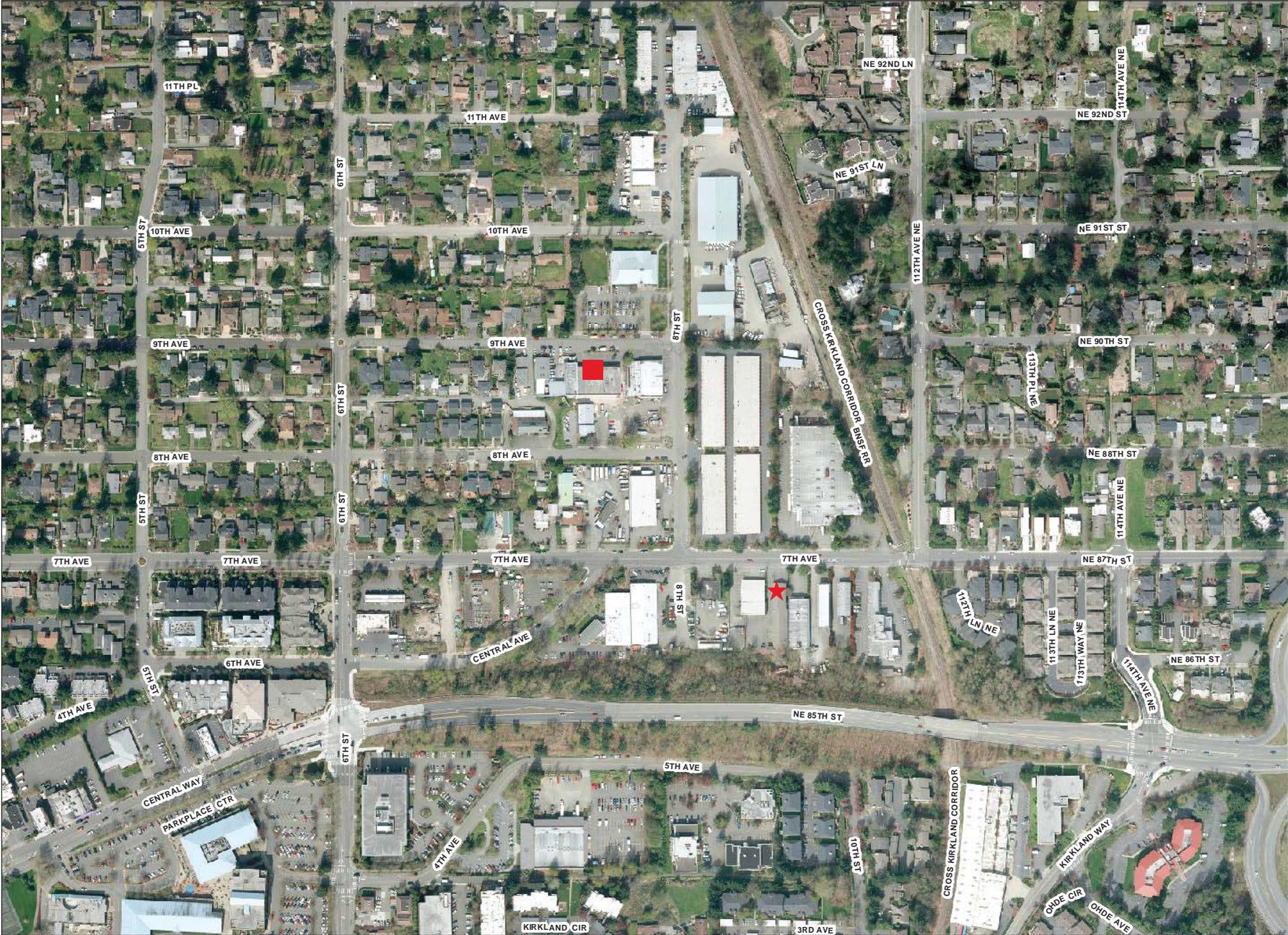
- ★ Producer & Processor
- ▲ Retailer



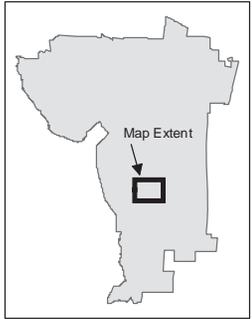
Eligible Marijuana License Applications Norkirk

(As of January 7, 2014)

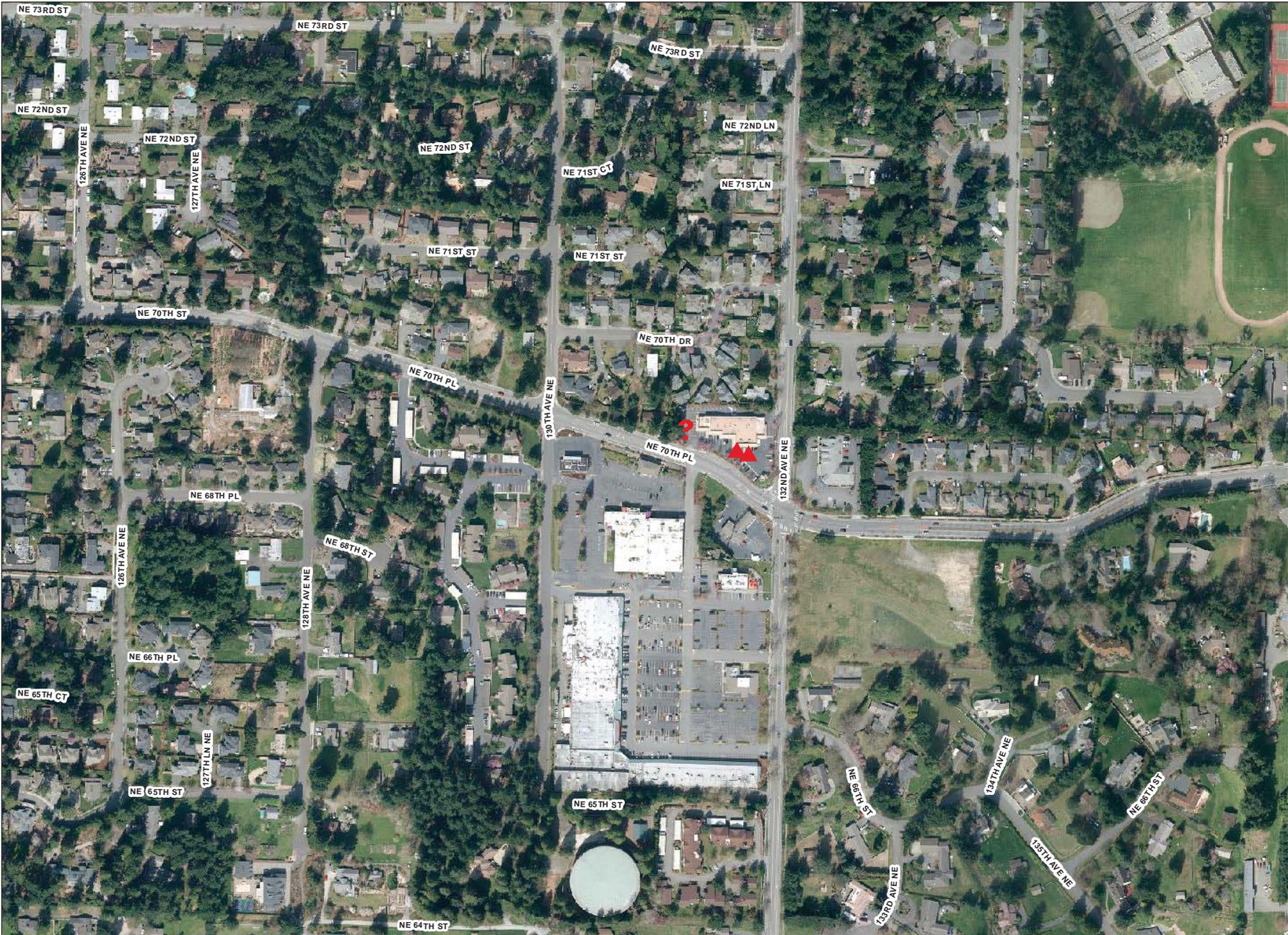
Based on information obtained from the Washington State Liquor Control Board.



Type	
	Processor
	Producer & Processor

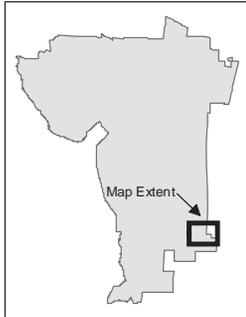


Eligible Marijuana License Applications South Rose Hill
(As of January 7, 2014)
Based on information obtained from the Washington State Liquor Control Board.



Type

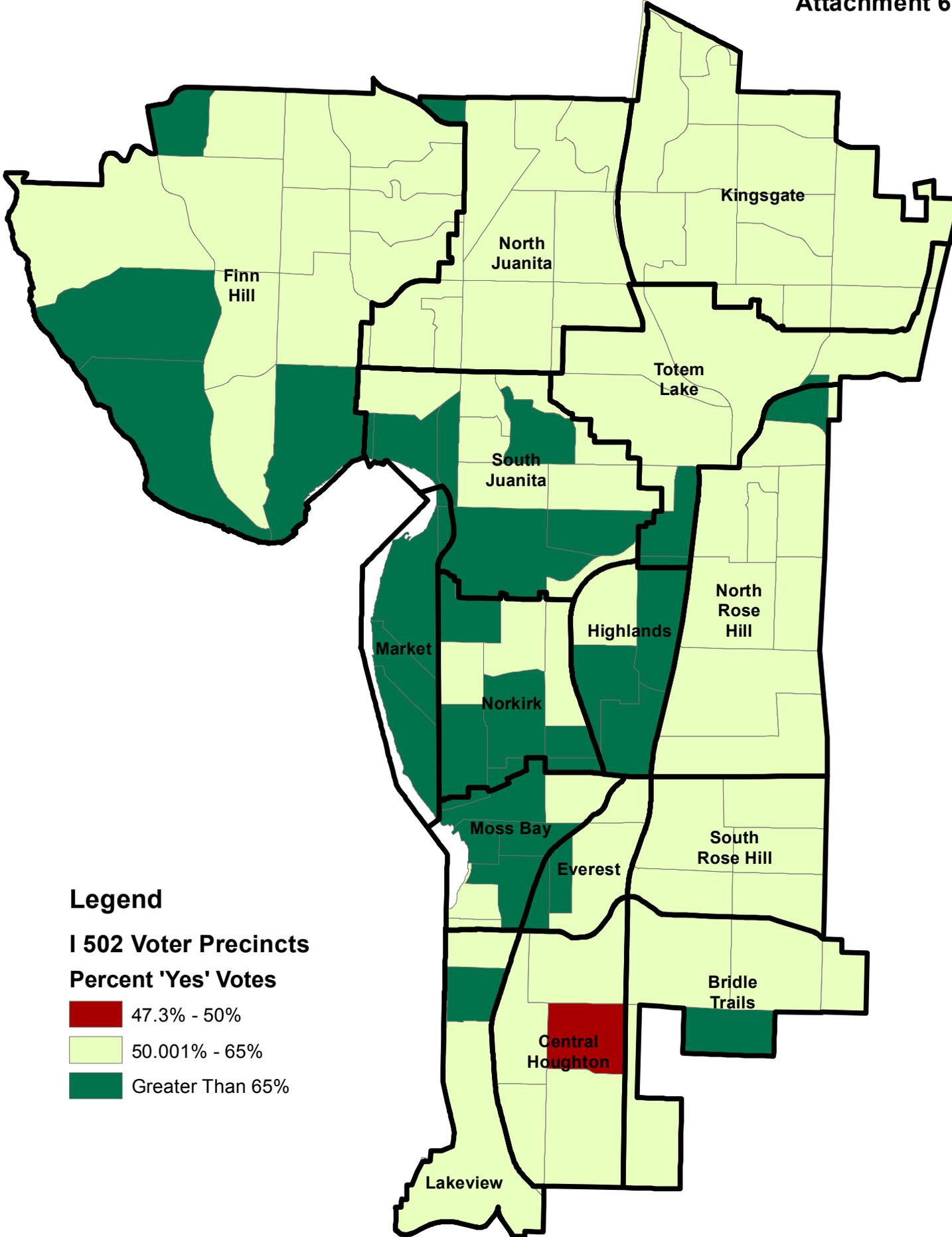
-  Retailer
-  Invalid Address



Approximate Vote by Neighborhood	Yes	No	Percentage Yes
Finn Hill	5,451	3,367	62%
North Juanita	2,585	1,727	60%
Kingsgate	3,150	2,463	56%
Totem Lake	915	585	61%
South Juanita	2,490	1,356	65%
Market	751	375	67%
Norkirk	1,378	688	67%
Highlands	1,130	531	68%
North Rose Hill	2,092	1,409	60%
South Rose Hill	998	687	59%
Everest & Moss Bay	2,096	1,107	65%
Bridle Trails	869	572	60%
Central Houghton	1,208	813	60%
Lakeview	899	552	62%
Total	26,012	16,232	62%

Based on I-502 Voting Results by Precincts

Source: King County Elections



Legend

I 502 Voter Precincts

Percent 'Yes' Votes

-  47.3% - 50%
-  50.001% - 65%
-  Greater Than 65%

ORDINANCE O-4434

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO LAND USE AND ZONING, ADOPTING INTERIM ZONING REGULATIONS PROHIBITING THE RETAIL SALE OF RECREATIONAL MARIJUANA AS A PERMITTED LAND USE IN THE MARKET STREET CORRIDOR (MSC) MSC 1 AND MSC 2 ZONES; DECLARING AN EMERGENCY, PROVIDING FOR SEVERABILITY, AND ESTABLISHING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, 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; and

WHEREAS, the Washington State Liquor Control Board has adopted rules pertaining to the licensing of marijuana producers, processors, and retailers and has accepted applications, and is poised to issue licenses for these marijuana businesses; and

WHEREAS, the State Liquor Control Board has determined that two state licenses for the retail sale of recreational marijuana may be issued for the City of Kirkland; and

WHEREAS, on January 16, 2014, the Washington State Attorney General issued a formal opinion which concluded that I-502 does not prevent local governments from regulating or banning marijuana businesses; and

WHEREAS, the City Council believes that health, safety, and welfare of the community is best served by imposing interim regulations to exclude the retail sale of recreational marijuana from certain zones, with neighboring incompatible uses, while permanent Zoning Code amendments are considered; and

WHEREAS, on February 4, 2014, the City Council conducted a public hearing to take public testimony on the imposition of interim zoning regulations; and

WHEREAS, on January 27, 2014, a determination of nonsignificance was issued on this proposed Ordinance; and

WHEREAS, the City has the authority to enact interim zoning regulations under RCW 35A.63.220 and RCW 36.70A.390;

NOW, THEREFORE, the City Council of the City of Kirkland do ordain as follows:

Section 1. Findings. The recitals set forth above are incorporated as findings of fact in support of the interim regulations imposed by this ordinance. The City Council further finds as follows:

a. The City Council wishes to exercise its police power authority granted under article XI, section 11 of the Washington Constitution to promote public safety, health, and welfare, but expressly disclaims any

intent to exercise authority over marijuana uses in way that would conflict with the federal Controlled Substances Act; and

b. It is the intent of these interim zoning regulations to ensure that marijuana retail uses are not located in zones where the use could cause inappropriate off-site impacts; and

c. The MSC 1 and MSC 2 Zones are bordered by single-family residential neighborhoods, a portion of MSC 1 is along a designated school walk route, the traffic impacts of marijuana retail locations are unknown and Market Street, which serves the MSC 1 and MSC 2 Zones, has limited parking and access and is heavily congested at certain periods of the day; and

d. There are other potential sites within the City where the zoning would permit retail sales of recreational marijuana and the properties appear to be located more than 1,000 feet from public parks, elementary and secondary schools, child care centers, and public transit centers, the minimum criteria of the State Liquor Control Board; and

e. The City Council has also determined that City staff shall draft permanent Zoning Code amendments for referral to the Planning Commission for review, public hearing, and recommendation by the Planning Commission.

Section 2. Interim Zoning Regulations.

a. Marijuana retailers are prohibited in the Market Street Corridor (MSC) MSC 1 and MSC 2 Zones.

Section 3. Definitions. As used in this ordinance, the following terms have the meanings set forth below:

a. "Marijuana" means all parts of the plant Cannabis, whether growing or not, with a THC concentration greater than 0.3% percent on a dry weight basis; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, it seeds or resin. The term does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plan which is incapable of germination.

b. "Marijuana-infused products" means products that contain marijuana or marijuana extracts and are intended for human use. The term "marijuana-infused products" does not include useable marijuana.

c. "Marijuana retailer" means a person licensed by the State Liquor Control Board to sell useable marijuana and marijuana-infused products in a retail outlet.

d. "Useable marijuana" means dried marijuana flowers. The term "useable marijuana" does not include marijuana-infused products.

Section 4. Duration. The interim zoning regulations adopted by this ordinance shall be in effect for a period of six months from the effective date of this Ordinance and shall automatically expire on that date unless extended as provided in RCW 35A.63.220 and RCW 36.70A.390, or unless terminated sooner by the Kirkland City Council.

Section 5. Work Plan. The City staff is directed to draft permanent Zoning Code amendments. The proposed amendments shall be referred to the Kirkland Planning Commission for review, public hearing, and recommendation for inclusion in the Kirkland Zoning Code.

Section 6. Declaration of Emergency. Based upon the recitals and findings set forth above, the City Council declares a public emergency exists requiring that this ordinance take effect immediately.

Section 7. Severability. If any provision of this ordinance or its application to any person or circumstance is held invalid, the remainder of the ordinance, or the application of the provision to other persons or circumstances is not affected.

Section 8. Effective Date. This ordinance shall be in force and effect immediately upon passage by the Kirkland City Council.

Section 9. Publication. Publication of this ordinance shall be pursuant to Section 1.08.017, Kirkland Municipal Code in the summary form attached to the original of this ordinance and by this reference approved by the City Council.

Passed by majority vote of the Kirkland City Council in open meeting this __ day of _____, 2014.

Signed in authentication thereof this ___ day of _____, 2014.

MAYOR

Attest:

City Clerk

Approved as to Form:

City Attorney

PUBLICATION SUMMARY
OF ORDINANCE O-4434

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO LAND USE AND ZONING, ADOPTING INTERIM ZONING REGULATIONS PROHIBITING THE RETAIL SALE OF RECREATIONAL MARIJUANA AS A PERMITTED LAND USE IN THE MARKET STREET CORRIDOR (MSC) MSC 1 AND MSC 2 ZONES; DECLARING AN EMERGENCY, PROVIDING FOR SEVERABILITY, AND ESTABLISHING AN IMMEDIATE EFFECTIVE DATE.

SECTION 1. Spells out the findings in support of the interim regulations imposed by the ordinance.

SECTION 2. Lists the interim zoning regulations.

SECTION 3. Provides definitions.

SECTION 4. Defines the duration of the ordinance.

SECTION 5. Sets the work plan.

SECTION 6. Declares that a public emergency exists requiring that the ordinance take effect immediately.

SECTION 7. Provides a severability clause for the ordinance.

SECTION 8. Establishes the effective date as immediately upon passage by the Kirkland City Council.

SECTION 9. Authorizes publication of the ordinance by summary, which summary is approved by the City Council pursuant to Section 1.08.017 Kirkland Municipal Code.

The full text of this Ordinance will be mailed without charge to any person upon request made to the City Clerk for the City of Kirkland. The Ordinance was passed by the Kirkland City Council at its meeting on the _____ day of _____, 2014.

I certify that the foregoing is a summary of Ordinance _____ approved by the Kirkland City Council for summary publication.

City Clerk