



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, AICP, Planning Director
Date: May 22, 2014
Subject: Norkirk LIT Zone Marijuana Sales

RECOMMENDATION

Discuss issues and concerns about marijuana sales in the Norkirk Neighborhood Light Industrial Technology (LIT) Zone and provide direction to staff for any desired additional work.

BACKGROUND DISCUSSION

Washington voters passed I-502 in November of 2012, which made marijuana growing, production and retail sales legal under state law, even though it is still not legal under federal law. Under I-502 the Washington State Liquor Control Board (WSLCB) was given oversight over marijuana production and sales. In 2013 the WSLCB issued a series of regulations that identified where marijuana sales would be prohibited. These included bans on marijuana stores within 1000 feet of schools, libraries, state licensed daycare centers and other similar facilities defined by the state where children were present. Under Kirkland's zoning code, any retail-zoned location that was not prohibited by the WSLCB restrictions was a potential location for a marijuana retail store. After applying the WSLCB buffers, most of the logical retail locations in Kirkland were prohibited.

After receiving the preliminary recommendations from the state, Kirkland staff presented maps to the City Council in the summer of 2013 and asked for direction on whether additional restrictions or regulations should be applied by the City. At that time, the Council elected not to impose additional restrictions as it was unclear that state law would even allow cities to restrict beyond I-502, and it was unclear whether taking proactive action on marijuana would create liability for the City under federal law since marijuana remained illegal at the federal level. After the initial discussion with the City Council, the Washington State Attorney General issued an opinion that cities could regulate marijuana production and retail sales facilities. In addition, residents of the Market Neighborhood came to the Council and highlighted concerns about several potential marijuana retail locations along Market Street. The concerns expressed were the impact of potential marijuana sales traffic on Market Street, which is heavily congested at rush hour, as well as the safety of school children as several major school walk routes and school crosswalks were established along Market.

Based on the Attorney General's Opinion, the feedback from Market residents, and staff investigation of the varied experiences in Colorado which had also legalized marijuana, the Council adopted interim marijuana retail regulations that banned sale of marijuana on properties adjacent to officially adopted School Walk Routes. But the Council was also concerned that the interim regulations further restricted the number of potential retail sites to such an extent that it would be difficult for a marijuana retail store to locate anywhere in Kirkland. Therefore, as part of the interim regulations, the Council also added retail sales of marijuana as an allowed use in the LIT Zones and Totem Lake Zones where such locations were not already prohibited by the WSCLB restrictions. The interim regulations will expire in September of 2014, and will need to be extended as the Planning Commission is currently fully scheduled in 2014 processing the 2035 Comprehensive Plan update and will be unable to take up the issue of marijuana zoning and regulation until sometime in 2015.

At recent Council meetings, residents of the Norkirk Neighborhood expressed concerns about the potential sale of marijuana in the LIT zone at the southeast corner of the neighborhood. The primary concern expressed by the residents was the close proximity of residential housing to the light industrial uses. On some streets in the Norkirk LIT zone, homes and commercial businesses are side-by side on the same street. Residents also expressed concerns about the potential traffic impacts, as well as the unknown potential for crime associated with marijuana retail businesses. The residents commented that these potentially negative impacts would be magnified by the proximity of residences to the commercial properties, and asked the Council to prohibit marijuana retail sales in the Norkirk LIT zone.

At the May 20 Council meeting, Council members asked to discuss those concerns at a subsequent meeting. A map showing the permitted locations for marijuana retail businesses throughout the City is shown in Attachment 1. The map has screened out locations that are permitted by the zoning but which do not appear to be permitted under I-502 buffer restrictions.

Impact of Dance Studio

One of the neighborhood residents testified that there is a children's dance studio located in the Norkirk LIT zone and that she had heard from the Washington State Liquor Control Board (WSLCB) that the dance studio would qualify as a protected use under Initiative 502 and require a 1000 ft. buffer, which would have eliminated much of the Norkirk LIT zone from allowing a marijuana retail business.

Council asked that staff contact the WSLCB and verify this. Eric Shields, the Planning Director emailed this question to the WSLCB and received a response that the studio would not qualify as a protected use because:

"WAC 314-55-010(19) states that to be considered a "recreation center" for our purposes a business must be owned and/or managed by a charitable nonprofit organization, city, county, state, or federal government."

Mr. Shields then followed up asking what qualifies a business to be considered a

“charitable nonprofit organization” and received a response that it would need to qualify under the Internal Revenue Service regulations. This response reminded staff of similar situations where businesses have sought to qualify as a “community facility” use under the Kirkland Zoning Code. Certain recreation types of businesses are not allowed in some zones, but community facilities are; and by qualifying as nonprofit businesses under IRS regulations, the recreation businesses have been able to be permitted as community facilities. Mr. Shields pointed this out to the WSLCB employee with whom he was communicating and the employee responded that he’d need to discuss the matter with his supervisor. Mr. Shields followed up a few days later to see if there was any further information, but has not received a response. Staff will follow up again with the WSLB and hopes to have more information prior to the June 3 Council meeting.

Status of WSLCB Retail licenses

In early May, the WSLCB conducted a lottery of retail license applicants and created a rank order list of applicants in each jurisdiction. Since Kirkland was allocated a maximum of two retail locations, the top two ranked Kirkland applicants have the opportunity to secure retail licenses from the WSLCB. Each applicant identified an intended location for their business, but staff has confirmed that the WSLCB will allow the applicants to change locations if their intended location doesn’t work out. If either of the top two applicants cannot secure a location, then the next ranked applicant will have a chance to do so.

The ranked list of Kirkland retail applicants is provided in attachment 2. As you will see, both of the top two applicants have indicated the same address – a small house in a commercial zone across 120th Ave. NE from Costco. That site is a permitted location under City zoning and appears not to be precluded by I-502 buffer restrictions. However, the site is severely restricted by wetlands and may be difficult to develop in conformance with City zoning regulations.

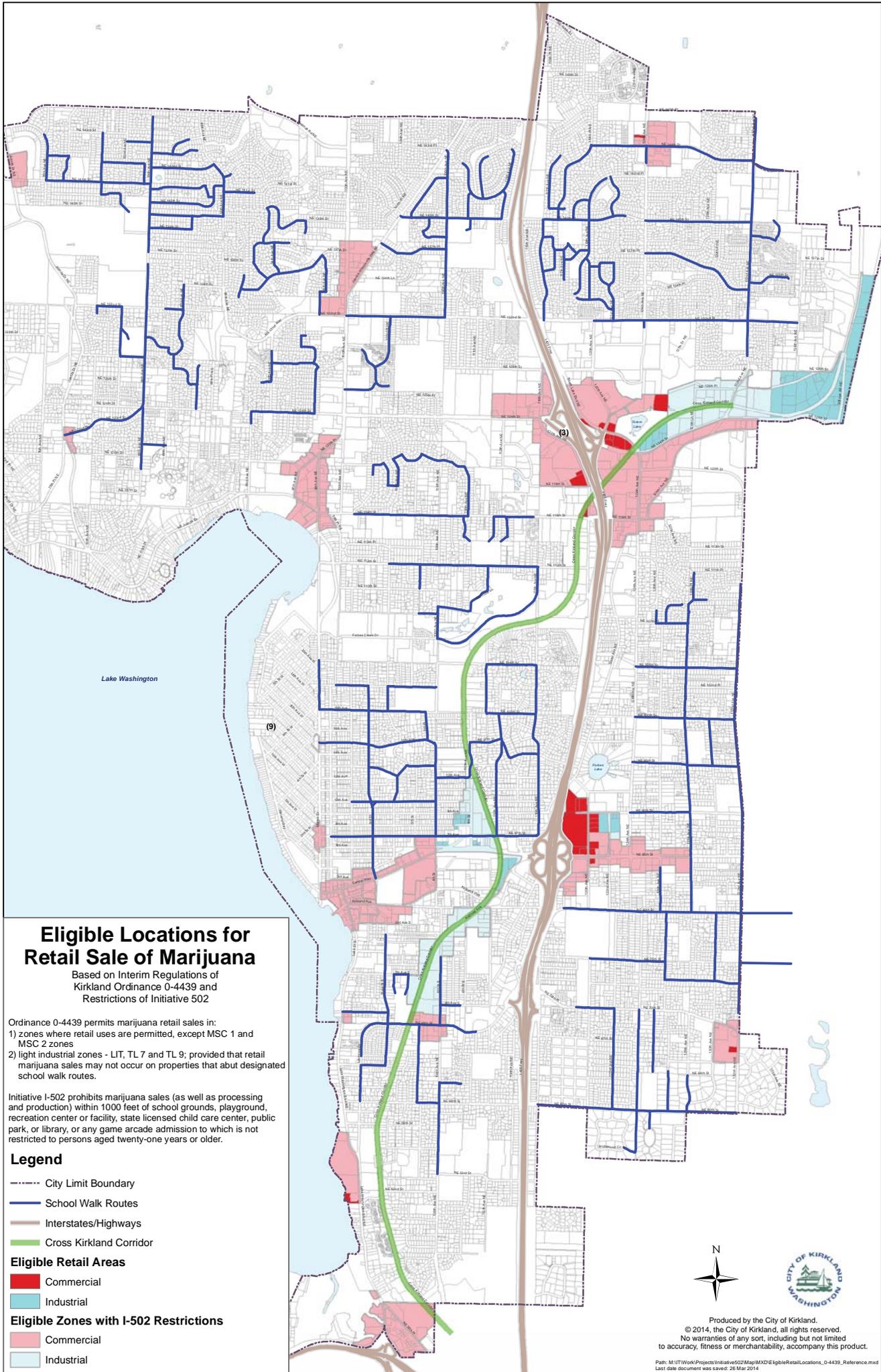
Options for Responding to Norkirk Residents’ Concerns

Staff suggests that the Council consider the following options for responding to the concerns presented by the Norkirk residents:

1. Maintain the existing interim ordinance, and consider potential changes when the interim ordinance needs to be extended in September of 2014.
2. Consider a new interim ordinance that prohibits retail marijuana sales in the LIT zone. The ordinance could be drafted to preclude retailing in all LIT zones or only the LIT zone in the Norkirk Neighborhood. Under either scenario, light industrial zones in the Totem Lake Neighborhood would remain as eligible locations
3. Consider an interim ordinance that uses other methods to exclude the Norkirk LIT zone such additional school walk route designations or buffers from low residential development.

Attachments:

1. Permitted retail locations in Kirkland
2. Kirkland retail lottery rankings



Eligible Locations for Retail Sale of Marijuana

Based on Interim Regulations of Kirkland Ordinance 0-4439 and Restrictions of Initiative 502

Ordinance 0-4439 permits marijuana retail sales in:

- 1) zones where retail uses are permitted, except MSC 1 and MSC 2 zones
- 2) light industrial zones - LIT, TL 7 and TL 9; provided that retail marijuana sales may not occur on properties that abut designated school walk routes.

Initiative I-502 prohibits marijuana sales (as well as processing and production) within 1000 feet of school grounds, playground, recreation center or facility, state licensed child care center, public park, or library, or any game arcade admission to which is not restricted to persons aged twenty-one years or older.

Legend

- City Limit Boundary
- School Walk Routes
- Interstates/Highways
- Cross Kirkland Corridor

Eligible Retail Areas

- Commercial
- Industrial

Eligible Zones with I-502 Restrictions

- Commercial
- Industrial



Produced by the City of Kirkland.
 © 2014, the City of Kirkland, all rights reserved.
 No warranties of any sort, including but not limited to accuracy, fitness or merchantability, accompany this product.

Path: M:\IT\Work\Projects\Initiative502\Map\MXD\EligibleRetailLocations_0-4439_Reference.mxd
 Last date document was saved: 26 Mar 2014.

Application				Lottery
Number	Tradename	Location Address	City	Rank
415613	TWISTED GREENS CORP	8734 120TH AVE NE	KIRKLAND	1
414907	420 PM	8734 120TH AVE NE	KIRKLAND	2
413780	HIGHER VIBRATIONS	12504 116TH AVE NE	KIRKLAND	3
414240	DAN'S HERBS	12543 TOTEM LAKE BLVD NE	KIRKLAND	4
414475	TWISTED SACKS CORP	8734 120TH AVE NE	KIRKLAND	5
415652	RETAIL MARIJUANA	1818 MARKET ST	KIRKLAND	6
414407	KUSH	12525 TOTEM LAKE BLVD NE	KIRKLAND	7
414984	THE NOVEL TREE	1313 MARKET ST STE 1000	KIRKLAND	8
413826	CEMA INVESTMENTS	12543 TOTEM LAKE BLVD NE	KIRKLAND	9
414319	BUDDY'S BUDS	12525 TOTEM LAKE BLVD NE	KIRKLAND	10
414906	420 PM	8734 120TH AVE NE	KIRKLAND	11
414916	STONER HAZE	8734 120TH AVE NE	KIRKLAND	12