



City of Tacoma
Planning Commission

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(vacant)

September 20, 2017

The Honorable Mayor and City Council
City of Tacoma
747 Market Street, Suite 1200
Tacoma, WA 98402

Honorable Mayor Strickland and Members of the City Council,

On behalf of the Tacoma Planning Commission, I am forwarding our recommendations on the Proposed Code Amendment concerning Marijuana Use Buffers.

The City Council adopted Resolution No. 39742 on June 6, 2017, requesting the Commission to consider adding local definitions of "Playground" and "Recreation center or facility" to the City's zoning of marijuana uses and including "metropolitan parks district" in the ownership paradigm, in order to protect these types of facilities owned by Metro Parks Tacoma to the level of buffering intended by the state, but currently not covered by state definitions found at Washington Administrative Code.

By adopting the resolution, the City Council has initiated a process for enacting interim regulations (as per TMC 13.02.055), with the intent to adopt the proposed local definitions on an interim basis, until such time as the state modifies its definitions. The Commission, however, believes that this important and relatively straightforward matter should and can be accomplished in an equally effective yet more streamlined manner through the standard process for code amendment (as per TMC 13.02.045), instead of the interim zoning process.

The Commission conducted a public hearing on September 6, 2017 and received no opposing comments on the proposed code amendment. The Commission believes the proposal can effectively alleviate the problems in permitting marijuana uses resulted from the gap between the state's intent and definitions and prevent further conflicts from occurring. Enclosed is the "*Planning Commission's Findings of Fact and Recommendations Report, September 20, 2017*" that summarizes the proposed amendment, the public review process, and the Commission's deliberations. We respectfully request the City Council adopt the recommendations of the Planning Commission.

Sincerely,

STEPHEN WAMBACK, Chair
Tacoma Planning Commission

Enclosure



The City of Tacoma does not discriminate on the basis of disability in any of its programs, activities, or services. To request this information in an alternative format or to request a reasonable accommodation, please contact the Planning and Development Services Department at (253) 591-5056 (voice) or (253) 591-5820 (TTY).

747 Market Street, Room 345 ■ Tacoma, WA 98402 ■ (253) 591-5682 ■ FAX (253) 591-5433 ■ <http://www.cityoftacoma.org/planning>



Marijuana Use Buffers

Proposed Amendment to the Tacoma Municipal Code

Planning Commission

Findings of Fact and Recommendations Report

(Approved on September 20, 2017)

A. Subject:

Proposed zoning code amendment concerning marijuana use buffers.

B. Summary of the Proposal:

The proposal would amend the Tacoma Municipal Code ("TMC"), Section 13.06.565 Marijuana Uses, Subsection B.3, as follows (deletions shown in ~~red strikethroughs~~ and additions in blue underlines):

3. For purposes of this Section and the standards applicable to state-licensed marijuana uses, the terms and definitions provided in WAC 314-55 shall ~~generally apply unless the context clearly indicates otherwise~~ except for the following definitions:

(a) "Playground" means a public outdoor recreation area for children, usually equipped with swings, slides, and other playground equipment, owned and/or managed by a city, county, state, or federal government, or a metropolitan parks district.

(b) "Recreation center or facility" means a supervised center that provides a broad range of activities and events intended primarily for use by persons under twenty-one years of age, owned and/or managed by a charitable nonprofit organization, city, county, state, or federal government, or a metropolitan parks district.

By adding local definitions of "Playground" and "Recreation center or facility" to the City's zoning of marijuana uses and including "metropolitan parks district" in the ownership paradigm, the proposal would protect said facilities owned by Metro Parks Tacoma ("MPT") to the level of buffering intended by the state, but currently not covered by state definitions found at Washington Administrative Code ("WAC") 314-55-010(24)-(27).

The proposal was initiated by the City Council via Resolution No. 39742 (see Attachment "1"), adopted on June 6, 2017, whereby the Planning Commission was requested to consider recommending said code amendment to the City Council for adoption on an interim basis, i.e., as interim regulations, until such time as the state corrects its own definitions.

C. Findings of Fact:

1. Legislative Background:

- a. State Initiative 502 ("I-502") was approved by Washington voters in November 2012, providing a framework for licensing and regulating the production, processing, and retail sale of recreational marijuana.
- b. The Cannabis Patient Protection Act ("CPPA") was enacted by the State Legislature in April 2015, establishing regulations for the formerly unregulated aspects of the marijuana system and aligning it with the recreational system.

- c. The Washington State Liquor and Cannabis Board (“LCB”) is the agency responsible for licensing and regulating marijuana. The LCB established the first set of marijuana related administrative procedures and standards in December 2013, began to issue marijuana licenses in March 2014, and has since been carrying out its rulemaking process on a periodic basis.
- d. In response to I-502, the CPPA, and applicable rules of the LCB, the City Council has taken the following legislative actions relating to marijuana uses:
 - Enacting interim regulations on November 5, 2013, effective for one year from November 17, 2013 to November 16, 2014, pending the results of the LCB’s first rulemaking (Substitute Ordinance No. 28182); and extending the interim regulations on September 30, 2014, for six months, through May 16, 2015 (Ordinance No. 28250);
 - Enacting permanent marijuana regulations on February 17, 2015, superseding the interim regulations (Amended Ordinance No. 28281);
 - Imposing a moratorium on permitting marijuana retail uses on January 12, 2016, for six months, through March 10, 2016, in response to the LCB’s expansion of the cap on retail marijuana stores in Tacoma (Substitute Ordinance No. 28343); and
 - Amending the Public Nuisances Code and the Land Use Regulatory Code concerning marijuana uses on May 24, 2016, and terminating the moratorium (Amended Ordinance No. 28361).

2. Initiation of the Proposed Code Amendment:

- a. The consideration for the proposed code amendment was initiated by the City Council on June 6, 2017, via Resolution No. 39742 (see Attachment “1”), which was prompted by an LCB-denied variance application for a marijuana production facility within 1,000 feet of an MPT-owned playground, as articulated in a memorandum from the City Attorney’s Office to the City Manager, dated May 1, 2017, that called out the issue and suggested the need for said code amendment (see Attachment “2”).
- b. The adoption of Resolution No. 39742 was also in response to the Council Consideration Request submitted by Deputy Mayor Robert Thoms on May 4, 2017, that urged the City Council “to amend the City of Tacoma’s marijuana regulation ordinance to include Metropolitan Park District parks, recreation centers, facilities, and playgrounds in the 1,000 foot buffer zone for marijuana uses” (see Attachment “3”).
- c. Resolution No. 39742 indicates that City staff has discovered a gap between the state’s intent to require greater setback buffers for public playgrounds and recreational centers and facilities and the state’s definitions for these sites. This gap arises from the state’s unintended omission of “metropolitan parks districts” from the ownership paradigm in the WAC definitions of “Playground” and “Recreation center or facility.” The City understands that the state intends to correct this omission in its definitions, but it may take some time to do so.
- d. Resolution No. 39742 suggests that the City can alleviate the problems that have arisen in permitting marijuana uses and prevent further conflicts from occurring, by adding these two definitions in the TMC on an interim basis, until such time as the state corrects its own definitions.
- e. Resolution No. 39742 also stipulates the text of the proposed code amendment, which is also mentioned above in the section of “Summary of the Proposal.” The text exemplifies the legislative intent of the City Council, does not deviate from the existing definitions of the WAC, and can be reasonably expected to be in compliance with the state’s definitions when corrected.

- f. Resolution No. 39742 does not declare an emergency for the matter, nor does it specify when the Planning Commission must provide its findings of fact and recommendations concerning the need for the interim regulations. Nevertheless, it is understood that the City Council intends to move forward with the proposed code amendment in a fairly swift manner.

3. Impacts of the Proposal:

- a. The proposed code amendment would not have any impact to existing marijuana businesses, including retailers, producers and processors. In staff's original analysis of the buffer zones as set forth in Amended Ordinance No. 28361 (adopted on May 24, 2016), playgrounds, for mapping purposes, were included and assumed to be in all parks, including those owned by MPT. As illustrated in an up-to-date map of the locations of current marijuana businesses (see Attachment "4"), all MPT-owned parks that contain playground equipment are already located within the mapped buffer zones. Adding definitions of "Playground" and "Recreation center or facility" to the code would not result in any additional facility being identified outside of existing buffered zones that could impact existing businesses; on the contrary, said code amendment should help ensure that all public playgrounds are buffered, as was intended.
- b. The proposed code amendment is not expected to have much, if any, impact to future marijuana businesses. As articulated in the memorandum from the City Attorney's Office (see Attachment "2"), it is highly unlikely that the LCB will grant licenses for prospective variance applications, if any, similar to the one that had prompted the consideration for the proposed code amendment, regardless of how the City handles those applications.
- c. Concerning the need for review of environmental impacts, the City Attorney's Office advised that the proposal entails text amendments to existing regulations resulting in no substantive changes respecting use or modification of the environment, and as such, environmental review for the proposal is exempt, per WAC 197-11-800(19)(b).
- d. The City Attorney's Office has reviewed the proposed code amendment pursuant to RCW 36.70A.370, and following the State Attorney General's recommended checklist, to determine if the City Council's adoption of the proposal might result in an unconstitutional taking of private property. Legal counsel has advised that the proposed regulations do not appear to do so.

4. Interim Regulations Process vs. Code Amendment Process:

- a. The interim regulations process initiated by Resolution No. 39742 will be carried out through the following general steps, in accordance with TMC 13.02.055 and based on the situations associated with this particular issue :
 - The Planning Commission develops findings of fact and recommendations to help the City Council justify the imposition of the interim regulations. The Council subsequently enacts the interim regulations, with a public hearing.
 - The interim regulations can be effective for 6 months, or 12 months with a work plan for the development of permanent regulations. Since it is unknown when this matter will be included in the LCB's rulemaking schedule, it will be appropriate to set the interim regulations effective for 12 months.
 - Upon the expiration of the interim regulations, if the state has not corrected its definitions, the Council will need to extend the interim regulations for 6 months, with a public hearing. Further extensions of the interim regulations may be needed and shall be done in 6-month intervals, each with a public hearing held by the Council and supportive findings of fact.

- Upon the state’s correction of its definitions, the Commission will develop draft permanent regulations accordingly, conduct a public hearing, and make a recommendation to the Council. The Council will conduct a public hearing and adopt the permanent regulations, superseding the interim regulations.
 - b. Alternatively, the proposal could be handled through the normal code amendment process in accordance with TMC 13.02.045, whereby the Planning Commission develops draft permanent regulations, conducts a public hearing, and makes a recommendation to the City Council, and the Council conducts a public hearing and adopts the permanent regulations. This process will be repeated when the state’s definitions are corrected, and if it is determined that the permanent regulations need to be amended accordingly.
 - c. The normal code amendment process is more streamlined than the interim regulations process, but will achieve the same effects, primarily due to the fact that the proposed code amendment is relatively straightforward, uncontroversial, and of no impact to existing or future marijuana businesses. It is also a process less dependent on the uncertain rulemaking schedule of the LCB.
 - d. Concerning the project timeline, initially, the imposition of the interim regulations was expected to occur in September 2017, while the code amendment process may not be completed until October 2017. However, more time will be needed for following up on the interim regulations process, i.e., developing permanent regulations or extending the interim regulations, depending on the progress of the state. The code amendment process, on the other hand, needs to be revisited only if necessary, which can be accomplished within a relatively short time frame.
5. Public Hearing and Public Comments:
- a. At the meeting on July 19, 2017, the Planning Commission decided to proceed with the “Code Amendment Process” as articulated above. The Commission also compiled and released a draft Findings of Fact and Recommendations Report for public review, and set September 6, 2017 as the date for a public hearing on the proposed code amendment as depicted in “Section B. Summary of the Proposal.” The City Council was subsequently informed of such decision of the Commission.
 - b. Notice of the public hearing was widely disseminated to Neighborhood Councils, business district associations, various civic and community organizations, adjacent jurisdictions, City departments, State agencies, the Puyallup Tribal Nation, The News Tribune, the Tacoma Public Library, Joint Base Lewis-McChord, as well as marijuana stakeholders (i.e., owners of existing marijuana businesses and applicants of prospective marijuana businesses).
 - c. The Commission received one oral testimony at the public hearing on September 6, 2017 and received three pieces of written comments before the public hearing record closed on September 11, 2017 (see Attachment “5”). Three of the four commenters were in support of the proposed code amendment. The fourth individual, Mr. Tim Gosselin, is the applicant of the “Gosselin App” as referenced in the above-mentioned memorandum from the City Attorney’s Office to the City Manager that had suggested the need for the proposed code amendment (see Attachment “2”). Mr. Gosselin provided background information about, and his arguments for, the “Gosselin App” (Planning and Development Service Department File No. LU16-0195), with the intent to assist the Commission in making a better informed decision, but did not suggest the Commission change its position.

- d. The Commission understands that LU16-0195 was submitted in August 2016, first denied by the Planning Director in December 2016 for lack of authority to grant variance, then reversed by the Hearing Examiner in February 2017, thereafter granted the variance by the Planning Director in March 2017, only to be denied for licensing by the State. The State’s denial stated that the City has no authority to grant the variance as requested. The Commission also understands that there was a similar variance application submitted by another applicant in March 2017 (File No. LU17-0052) that was subsequently denied by the Planning Director in July 2017, based on the understanding that it would be unlikely that the State will grant a license for the requested location given the result on the “Gosselin App”, regardless of how the City handles the variance application. The legal opinion of the City Attorney’s Office is that it is fairly apparent that the State does not believe a variance to be an appropriate vehicle for reducing buffers, as opposed to having an across-the-board reduction written into the local code.

D. Conclusions and Recommendations:

The City Council adopted Resolution No. 39742 on June 6, 2017 (see Attachment “1”), requesting the Planning Commission to consider adding local definitions of “Playground” and “Recreation center or facility” to the City’s zoning of marijuana uses and including “metropolitan parks district” in the ownership paradigm, in order to protect these types of facilities owned by Metro Parks Tacoma to the level of buffering intended by the state, but currently not covered by state definitions found at Washington Administrative Code. By adopting the resolution, the City Council has initiated an interim zoning process, with the intent to adopt these local definitions on an interim basis, until such time as the state modifies its definitions.

The Commission understands there is a gap between the state’s intent to require greater setback buffers for public playgrounds and recreational centers and facilities and the state’s definitions for these sites. The Commission also acknowledges the legal opinion as articulated in the memorandum from the City Attorney’s Office to the City Manager (see Attachment “2”) and in view of that, believes the proposed code amendment can effectively alleviate the problems that have arisen in permitting marijuana uses and prevent further conflicts from occurring.

The Commission concurs with the City Council concerning the need for the proposed code amendment, but believes that this important and relatively straightforward matter should and can be accomplished in an equally effective yet more streamlined manner through the standard process for code amendments (as per Tacoma Municipal Code, Section 13.02.045), instead of the interim zoning process (as per Tacoma Municipal Code, Section 13.02.055).

The Commission conducted a public hearing on September 6, 2017 on the proposed code amendment and received no opposing comments. The Commission recommends that the City Council adopt the proposed code amendment as depicted in “Section B. Summary of the Proposal”.

E. Attachments:

1. Resolution No. 39742 Initiating the Consideration for Interim Regulations (June 6, 2017)
2. Memorandum from the City Attorney’s Office to the City Manager (May 1, 2017)
3. Council Consideration Request from Deputy Mayor Robert Thoms (May 4, 2017)
4. Location Map of Current Marijuana Businesses (May 24, 2017)
5. Public Comments Received through the Public Hearing Process (September 12, 2017)



RESOLUTION NO. 39742

1 BY REQUEST OF DEPUTY MAYOR THOMS

2 A RESOLUTION relating to interim zoning; requesting that the Planning
3 Commission consider amending Chapter 13.06 of the Tacoma Municipal
4 Code, relating to the zoning of marijuana uses, on an interim basis, by
5 adding local definitions of "Playground" and "Recreation center or facility,"
6 in order to protect Metro Parks Tacoma-owned playgrounds and
7 recreation centers and facilities to the level intended by the state, but
8 currently not covered by state definitions.

9 WHEREAS the City's marijuana land use regulations, as set forth in
10 Amended Ordinance No. 28361, adopted on May 24, 2016, and found at
11 Section 13.06.565 of the Tacoma Municipal Code, are barely a year old, and

12 WHEREAS Washington State's regulatory framework for licensing and
13 regulating the production, processing and retail sale of marijuana is also relatively
14 new, and

15 WHEREAS City staff has discovered a gap between the state's intent to
16 require greater setback buffers for public playgrounds and recreational centers and
17 facilities and the state's definitions for these sites, found at Washington
18 Administrative Code ("WAC") 314-55-010(24)-(27), and

19 WHEREAS this gap arises from the state's unintended omission of
20 "metropolitan parks districts" from the ownership paradigm in the WAC definitions
21 of "Playground" and "Recreation center or facility," and

22 WHEREAS the City understands that the state intends to correct this
23 omission in its definitions, but it may take some time to do so; in the meantime, the
24 City can prevent conflicts from arising in local permitting, as has already happened,
25 by adding these two definitions in the TMC on an interim basis, and
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WHEREAS adding local definitions into the City's marijuana regulations for
“Playground” and “Recreation center or facility” that include ownership by a
metropolitan parks district will alleviate the problems that have arisen in permitting
marijuana uses that appear to conform with the state definitions, but not with the
state’s intent, until such time as the state corrects its own definitions; Now,
Therefore,

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TACOMA:

That the City Council hereby requests that the Planning Commission
consider amending Chapter 13.06 of the Tacoma Municipal Code, relating to
Zoning, on an interim basis, by adding local definitions of “Playground” and
“Recreation center or facility” as shown in Exhibit “A” hereto, in order to protect
Metro Parks Tacoma-owned playgrounds and recreation centers and facilities to
the level intended by the state, but currently not covered by state definitions.

Adopted _____

Mayor

Attest:

City Clerk

Approved as to form:

Deputy City Attorney



EXHIBIT "A"

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13.06.565 Marijuana Uses.

A. Intent. In November 2012, Washington voters passed Initiative 502, which establishes precedent for the production, processing and retail sale of marijuana for recreational purposes. In April 2015, the state Legislature enacted two laws, 2SSB 5052 and 2E2SHB 2136. The new laws establish regulations for the formerly unregulated aspects of the marijuana system, establish a "medical marijuana endorsement" that allows licensed marijuana retailers to sell medicinal marijuana to qualifying patients and designated providers, and attempt to align these changes with the existing recreational system.

Pursuant to RCW 69.50, the State has adopted rules establishing a state-wide regulatory and licensing program for marijuana uses (WAC 314-55). It is therefore necessary for the City to establish local regulations to address such uses.

It is the intent of these regulations to ensure that such state-licensed uses are located and developed in a manner that is consistent with the desired character and standards of this community and its neighborhoods, minimizes potential incompatibilities and impacts, and protects the public health, safety and general welfare of the citizens of Tacoma.

Recognizing the voter-approved right to establish certain types of marijuana businesses, it is also the intent of these regulations to provide reasonable access to mitigate the illicit marijuana market and the legal and personal risks and community impacts associated with it.

B. Applicability. The provisions of this Section shall apply city-wide. The specific development standards provided in this Section shall be in addition to the zoning and development standards generally applicable to the proposed use and the relevant zoning district. All licensed marijuana uses are required to fully comply with the provisions of this Section.

1. No Marijuana use as regulated herein and in WAC 314-55, that existed prior to the enactment of Ordinance No. 28182 on November 5, 2013, shall be deemed to have been a legally established use or entitled to claim legal non-conforming status.

2. As of July 1, 2016, in accordance with state law, collective gardens are prohibited.

3. For purposes of this Section and the standards applicable to state-licensed marijuana uses, the terms and definitions provided in WAC 314-55 shall ~~generally~~ apply ~~unless the context clearly indicates otherwise~~ except for the following definitions:

(a) "Playground" means a public outdoor recreation area for children, usually equipped with swings, slides, and other playground equipment, owned and/or managed by a city, county, state, or federal government, or a metropolitan parks district.

(b) "Recreation center or facility" means a supervised center that provides a broad range of activities and events intended primarily for use by persons under twenty-one years of age, owned and/or managed by a charitable nonprofit organization, city, county, state, or federal government, or a metropolitan parks district.



TO: Interim City Manager, Elizabeth A. Pauli
PDS Director, Peter Huffman

FROM: Jeff Capell, Deputy City Attorney *JAC*
Bill Fosbre, Acting City Attorney *BF*

SUBJECT: Marijuana Regulation; "Playground" Definition

DATE: May 1, 2017

Given the relative newness of the State's marijuana regulations, there was bound to be some glitches and gaps in their implementation. The City has become well acquainted with one of these in the form of the Washington Administrative Code ("WAC") definition of "playground." By way of background, it is clear from applicable statutes and regulations¹ that the State Legislature and the Washington State Liquor and Cannabis Board (the "Board") intended public playgrounds to be in a class of uses having the highest level of buffer protection from marijuana uses. By comparison, the buffer for other uses, such as a public transit center or library, can be reduced by local ordinance anywhere from 999 feet down to a minimum of 100 feet potentially. It should also be noted that the State has very clear preemptive authority when it comes to marijuana regulation.²

The gap presently at issue arises from the State's failure to include playgrounds owned by a metropolitan park district in its definition of "playground" at WAC 314-55-010 (25). In contrast, the State's definition of "park" does account for ownership by a metropolitan park district ("MPD").³ The State does not consider parks and playgrounds to be mutually exclusive. In other words, a given facility could be both a park and a playground depending on whether facilities indicative of both are present.

In discussions with the Board and its legal counsel, the Board represented that its omission of MPDs from ownership in the "playground" definition was unintentional and that the Board will most likely correct that omission in its next round of rulemaking. This correction will likely not happen until sometime after the current legislative session is complete. In the meantime, by letter dated February 22, 2017, the Board has suggested that the City may want to submit a petition for amendment of the playground definition

¹ e.g. RCW 69.50.331(8) (a) and (b) and WAC 314-55-050(10)-(11).

² RCW 69.50.608, titled "State preemption."

³ WAC 314-55-010(24).

more formally under RCW 34.05.330 titled “Petition for adoption, amendment, repeal—Agency action—Appeal.”

On a more immediate stage, the City has had one variance application for a marijuana production facility within 1,000 feet of a MDS owned playground that was (1) first denied by the PDS Director for lack of authority, (2) then reversed by the Hearing Examiner, (3) thereafter granted by the PDS Director, only to (4) be denied for licensing by the State (all referred to as the “Gosselin App”). According to the variance applicant, Tim Gosselin, the State’s denial stated that the City has no authority to grant a variance for the subject location for marijuana production,⁴ which brought the Gosselin App full circle.⁵ The City now has another, similar variance application pending for a location within 1,000 feet of a MPD playground/park combo. It is unlikely that the State will grant a license for this location given the result in the Gosselin App, regardless of how the City handles the variance application.

In the Hearing Examiner decision on the Gosselin App, the Hearing Examiner recognized the Board’s admission that it inadvertently omitted MPDs from the playground definition, and the incongruity that omission created with the stated intent to provide greater protection to playgrounds. That notwithstanding, she concluded that she had to follow the language of the “playground” definition as written and reversed the PDS Director’s denial of the variance. She did suggest in her decision that the City could amend its own ordinance to include MPD playgrounds in the 1,000 foot buffer zone in advance of any amendment by the State. Given that the State has refused to license the marijuana use at Gosselin’s property, it would make sense to amend the TMC in this manner in order to not perpetuate the disconnect between the City and the Board’s approach that exists at present.

At the suggestion of the Board, the City has, by letter, already requested that the Board fix the definition of playground to include expressly those owned by Metro Parks Tacoma, our local MPD. Unless there is a valid reason to differentiate, the same fix should be requested for the definition of “Recreation center or facilities,” which also does not account for ownership by a MPD. Examples of “Recreation center or facilities” in Tacoma owned by Metro Parks Tacoma would include the Star Center, the Center at Norpoint, and the Portland Ave. Community Center.

Please feel free to call me with any questions or concerns.

⁴ The subject location is within 1,000 feet of MPD owned Irving Park, which according to the State, is both a park and a playground.

⁵ It is fairly apparent that the State does not believe a variance to be an appropriate vehicle for reducing buffers, as opposed to having an across-the-board reduction written into the local code.



**CITY OF TACOMA, WASHINGTON
OFFICE OF THE CITY COUNCIL
COUNCIL CONSIDERATION REQUEST (CCR)**

TO: Mayor & City Council
FROM: Deputy Mayor Thoms and Council Assistant Brad Forbes
COPIES TO: Elizabeth Pauli, Acting City Manager; Mark Lauzier, Assistant City Manager;
Bill Fosbre, Acting City Attorney; Executive Leadership Team; File
SUBJECT: Marijuana uses buffer
DATE: May 4, 2017

ITEM/ISSUE PROPOSED FOR COUNCIL CONSIDERATION:

I ask for your support for the inclusion of the following item on the agenda at the earliest available meeting of the Study Session:

I respectfully ask the City Council to amend the City of Tacoma's marijuana regulation ordinance to include Metropolitan Park District parks, recreation centers, facilities, and playgrounds in the 1,000 foot buffer zone for marijuana uses.

BRIEF BACKGROUND:

It is clear from the relevant statutes and regulations (RCW 69.50.331(8) (a) and (b) and WAC 314-55-050(10)-(11)) that the State Legislature and the Washington State Liquor and Cannabis Board intended public playgrounds to be in a class of uses having the highest level buffer from marijuana uses. The buffer for parks, recreation centers, and facilities can be reduced, but the City's ordinance is presently unclear about any such reduction. The gap for playgrounds arises from the State's failure to include playgrounds (and recreation centers and facilities) owned by a metropolitan parks district in its definitions.

FUNDING REQUESTED:

This action does not require any funding.

If you have any questions related to the Council Consideration Request, please contact Brad Forbes at 253-591-5166 or bforbes@cityoftacoma.org.

SUBMITTED FOR COUNCIL CONSIDERATION BY: _____
Deputy Mayor Thoms

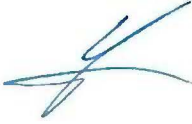
SUPPORTING COUNCILMEMBERS SIGNATURES (2 SIGNATURES ONLY)

(Signatures demonstrate support to initiate discussion and consideration of the subject matter by City Council for potential policy development and staff guidance/direction.)



1. _____

Mayor

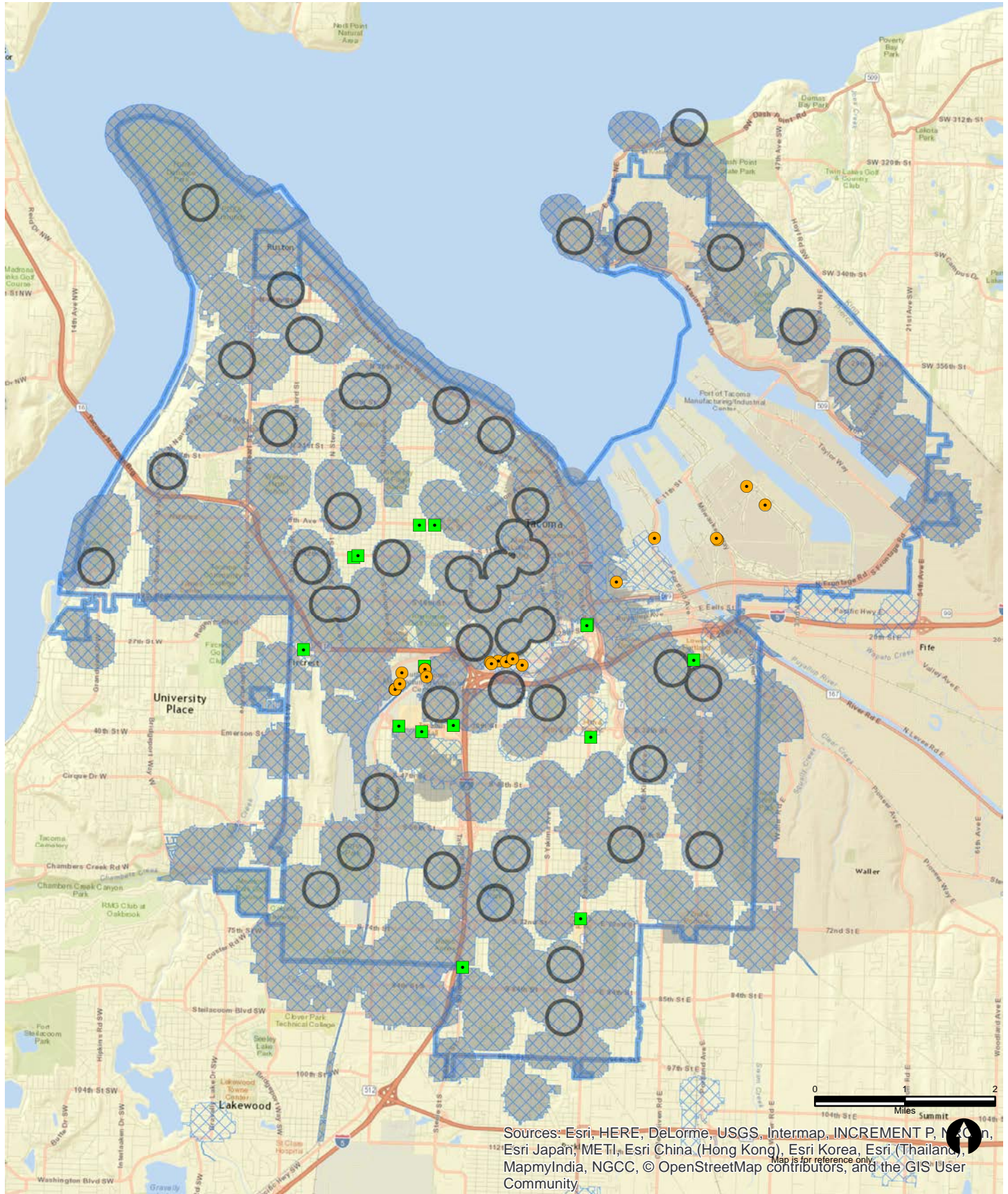


2. _____

POS# 7

Sensitive Use Buffers (As of May 24, 2017)

Locations of Current Marijuana Businesses



Sources: Esri, HERE, DeLorme, USGS, Intermap, INCREMENT P, NOAA, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Thailand), MapmyIndia, NGCC. © OpenStreetMap contributors, and the GIS User Community

- Green square: Retailer
- Orange circle: Producers and/or Processors
- Blue hatched area: City Boundary
- Black circle: Metro Park Playground Buffer (approximate location)
- Blue hatched area: No Retail Buffer
- Grey hatched area: No Production, Processing, or Research Buffer

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Community & Economic Development Department
GIS Analysis & Data Service
5/30/2017

Attachment 5
Public Comments Received
through the Public Hearing Process
September 12, 2017

* * * * *

From: Heidi [<mailto:batlmaidn3@aol.com>]
Sent: Sunday, September 10, 2017 1:23 PM
To: Wung, Lihuang; vadergan@yahoo.com; penzfrmhvn@comcast.net
Subject: Re: Marijuana Use Buffers Code Amendment

Lihuang Wung, Planning Services Division:

I totally support the change of TMC 13.06.565 by including Metropolitan Parks District. Venus Dergan and I discovered the loop hole while getting notices from the planning department about two marijuana processing plants wanting to have their facilities located within 1000 feet of a playground or Tot Lot. I sent an email to the Metro Parks board informing them of this loop hole along with the Mayor and all the City Council and thanks to Mr. Thoms he looked into the matter and got the ball rolling. Metro Parks should have been included in the WAC from the beginning, but for some reason was not.

Please send me an email that my support letter was received

Thank you,

Heidi White, S Tacoma Resident and concerned citizen

Staff Note:

Ms. Venus Dergan testified at the Planning Commission's public hearing on September 6, 2017, providing the same comment as shown here from Ms. Heidi White.

Lihuang Wung
September 11, 2017

From: Andrew Austin [mailto:andrewa@tacomaparks.com]
Sent: Wednesday, August 30, 2017 3:05 PM
To: Wung, Lihuang
Subject: Metro Parks Tacoma Comment on Marijuana Use Buffers Code Amendment

Mr. Wung,

Metro Parks Tacoma fully supports the proposed changes to the marijuana use buffers TMC amendment. Thank you for taking the time and effort to add Metropolitan Parks Districts into the ownership definitions of playgrounds and recreation centers. The updates to the code will be crucial to protecting many of our key assets for kids and youth from being adjacent/close marijuana retail outlets.

Please do not hesitate to contact me if staff, the planning commission, or council has questions about our position and support of these proposed code amendments.

Andrew Austin

Andrew Austin
Government Affairs Manager
Office: 253-305-1021
Cell: 253-732-9434
AndrewA@TacomaParks.com



CREATING HEALTHY OPPORTUNITIES TO PLAY, LEARN AND GROW

[website](#) | [facebook](#) | [twitter](#) | [instagram](#)

To: Members of the Planning Commission
From: Tim Gosselin
3511 No. Union Ave.
Tacoma, WA 98407
253-905-5403
RE: Marijuana Use Buffers Code Amendment
Agenda Item D-2, Regular Meeting, July 19, 2017

Dear Commission Members:

I spoke on this topic at your meeting last night. I am not writing to suggest that any of you change your positions regarding the proposed amendment. I am writing on the belief that the better informed your decision is, the more credible it becomes. As the representative from Planning and Development (P&D) indicated, I, unfortunately, am the cause of the proposed amendment.

What motivated this memo was the question asked by Commissioner Wamback last night wondering how the hearing examiner could have ordered a variance when just last year the Planning Commission made it clear it did not want marijuana operations within 1000 feet of a park. The question raised two issues: What did the hearing examiner actually order and why (I'm counting that as one); and, what has the Planning Commission's prior position been.

On the first question, it will help to understand the process that brought the case to the hearing examiner. The recount of facts given at the meeting last night was not entirely accurate. I mean no disrespect by that statement.

I own a small building in Nalley Valley that is 525 feet (nearest point to nearest point) from Irving Park. I applied for a variance citing state law, RCW 69.50.331 (8)(b) – the so-called “local option” – that allows cities to reduce the 1000 foot buffer from parks to as little as 100 feet. Planning and Development denied the application on the basis that Irving Park was a playground, not a park, and the local option did not allow variance from the 1000 foot set back for playgrounds. Stated another way, P&D determined that it lacked authority to grant my variance request.

P&D's position was both correct and incorrect. It was correct that the local option did not allow cities to reduce the 1000 foot required setback from playgrounds. It allows reductions from parks, but not playgrounds. It was incorrect that Irving Park was a playground.

At this point it helps to understand the difference in the definitions of park and playground. Tacoma adopted the definitions set forth in regulations adopted by the WSLCB. The definitions of “playground” and “park” are set forth in WAC 314-55-010. “Playground” is defined as:

. . . a public outdoor recreation area for children, usually equipped with swings, slides, and other playground equipment, owned and/or managed by a city, county, state, or federal government.

WAC 314-55-010(24). “Park” is defined as

“Public park” means an area of land for the enjoyment of the public, having facilities for rest and/or recreation, such as a baseball diamond or basketball court, owned and/or managed by a city, county, state, federal government, or metropolitan park district.

WAC 314-555-010(25)(emphasis added). I did not dispute that Irving Park is a public outdoor recreation area for children, equipped with swings, slides, and other playground equipment. To that extent, it is a playground. But the legislature/WSLCB did not limit the requirements to those physical characteristics. Not every playground triggers the setback. The legislature/WSLCB also imposed an ownership requirement. The facility must be “owned and/or managed by a city, county, state, or federal government.” Thus, playgrounds owned by a tribe, a church, a private entity or some other level of government like a public utility district do not satisfy the definition. Here, Irving Park is owned by a metropolitan park district. Regardless of similarities, metro park districts are not “city, county, state, or federal” governments. Moreover, the definition of “park” showed that when the legislature/WSLCB wanted to include facilities owned by metropolitan park districts, it (a) knew how to and (b) did. Omitting park districts from the definition of playgrounds was not a mistake.

Based on this analysis, I argued that the local option did apply to my application for variance and P&D did have authority to grant my request. I argued that P&D could not just ignore the clear wording of the regulations based on its view of the intent of the regulations. P&D disagreed and denied my application. Again, the basis of the denial was that P&D did not have authority to grant the request because it could not vary the setback from a playground.

I appealed to the hearing examiner. The issue the hearing examiner addressed was whether P&D had authority to grant my application. This necessarily required the hearing examiner to decide whether Irving Park was a park or a playground. If it was a park, P&D had authority. If it was a playground, it did not. P&D argued it was a playground. I argued it was a park.

The hearing examiner agreed with me. Though I understand you may have no interest in reading the decision, I have attached it in case you do. The hearing examiner decided that P&D had to follow the words of the definitions, not its interpretation of unexpressed intent. That is the nature of the rule of law. The words of the law guide the populace. Individual government officials don’t get to apply what they think the words should have said or wanted them to say. So, the hearing examiner decided that Irving Park was a park and not a playground. Therefore, P&D had authority to issue the variance if it wanted.

The primary point I want to make is this: You were told last night that the hearing examiner ordered P&D to issue the variance. That is not accurate. The hearing examiner simply told P&D it had authority to grant the variance. After the hearing examiner’s decision, my application returned to P&D for a decision on the merits. Director Huffman could have denied my application for any of the reasons set out in the variance ordinances. He could have found it to be inconsistent

with the Comprehensive Plan, not in the public interest, harmful to the public, or otherwise not warranted. Importantly, he could have denied it because of its proximity to an area where children play, whether or not the area met the definition of playground. Or, he could grant the application if he felt I had met all the conditions for doing so.

This is where my comments last night come in. Director Huffman did not deny my application, he granted it. In doing so he found that allowing my facility to be used for marijuana production and processing was consistent with the comprehensive plan and the public interest. In his decision he said:

Therefore, the Director concludes that the reduction in separation distance between the proposed marijuana production and processing use and Irving Park will not be contrary to the Comprehensive Plan or adversely affect the character of the neighborhood or rights of neighboring property owners.

.
The proposal is consistent with the Comprehensive Plan and will not have a detrimental effect on neighboring properties. Therefore, it will not cause a substantial detrimental effect on public interest.

Again, though I understand you may have no interest in reading the decision, I have attached it in case you do.

At last night's meeting, the representative of P&D said the proposed amendment would not change existing uses. He is only partially correct. While it does not remove any properties previously zoned for marijuana uses, it does eliminate the opportunity for properties like mine to receive a variance. And, as importantly, it takes away P&D's ability to make individualized choices about using properties for marijuana production and processing. At a time when so many industrial properties in Tacoma are sitting vacant and deteriorating, that seems significant to me.

The point of my comments last night was to suggest that the City would be taking away this opportunity without good reason. As my application shows, P&D has concluded that not every facility less than 1000 feet from a park is bad. The state itself doesn't see a problem with the way its definitions are worded, so it is not acting. It does not sound like the Commission has been shown that any other city has this concern. By setting Tacoma apart from other cities who have embraced the "local option" it is restricting its own economic development.

This seems contrary to the Comprehensive Plan, which the Commission's findings of fact do not address. Among the goals of the Comprehensive Plan are: Ensure continued growth and vitality of Tacoma's employment centers (Goal UF-8); establish designated corridors as thriving places that support and connect Tacoma's centers (Goal UF-10); support environmental health (Goal EN-4); promote housing that provides convenient access to jobs (Goal H-3); diversify and expand Tacoma's economic base (Goal EC-1); increase access to employment opportunities (Goal EC-2); cultivate a business culture that allows existing businesses to grow, draws new firms, and encourages homegrown enterprises (Goal EC-3); "Foster a positive business environment . . ." (Goal

EC-4); create “robust, thriving employment centers and strengthen and protect Tacoma’s role as a regional center for industry and commerce.” (Goal EC-6). We heard last night that a factor in homelessness is the absence of jobs. Why, at a time it is facing a homelessness crisis, and a deteriorating industrial core would the City want to restrict economic development?

There is clearly economic opportunity to be had. I had a tenant for my property within a month of receiving the variance. While the WSLCB has refused to license the tenant to use the building, that’s another fight. I believe the State is wrong in the same way the City was wrong, and will try to prove that as well.

Moreover, contrary to the comments made last night, it seems to me that neither the Planning Commission’s nor the City Council’s intent has been to keep marijuana production and processing 1000 feet from parks. In 2016, the Planning Commission presented a proposed ordinance that would have adopted reduced buffers from parks overall. In May, 2016, the City Council enacted Ordinance 28361 to allow only a 500 foot setback from “public parks, recreation centers or facilities, libraries, child care centers, and game arcades” for retail operations within the downtown district. These were possible because the City had not restricted its ability rely on the local option more than State law required. The proposed amendment will limit that ability.

In May of last year, the News Tribune quoted Mayor Strickland as saying about legalized marijuana: “We have rules from the state. We have a framework from the city. It’s legal now. Voters have said yes to it repeatedly. Let’s do the right thing and implement it.” The P&D representative candidly pointed out last night that the proposed amendment will impose a restriction on the City’s ability to act that State law does not require. To me, that’s not implementing what the people said yes to.

I do not have a personal stake in the outcome. My variance has been granted. But, I’m a lifelong resident of Tacoma. I spoke against the amendment because I believe the City is harming its own interests by adopting it, and I played a role in bringing it about. I also have an interest because I personally believe a receptive environment for marijuana production and processing could allow Tacoma to be a leader and center for innovation in the industry. Because I hold no personal animosity toward legalized marijuana, I view that as a great opportunity for the City. While I don’t expect my thoughts to change your mind, I do hope they will inform your decision a little bit.

Sincerely,
Tim Gosselin



City of Tacoma
Hearing Examiner

February 22, 2017

Timothy R. Gosselin
3511 N. Union Ave
Tacoma, WA 98407
(First Class & Electronic Mail Delivery)

Jeff H. Capell, Deputy City Attorney
City of Tacoma
Office of the City Attorney
747 Market Street Room 1120
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(Interoffice & Electronic Mail Delivery)

Re: *Timothy R. Gosselin v. City of Tacoma*
HEX 2016-041 (LU16-0195)

Dear Parties,

In reference to the above entitled matter, please find enclosed a copy of the Tacoma Hearing Examiner's Summary Judgment Order entered on February 22, 2017.

Sincerely,

Louisa Legg
Office Administrator

Enclosure (1) – SJ Order

cc: Peter Huffman, Director, Planning & Development Services Department, City of Tacoma
Lisa Spadoni, Principal Planner, Planning & Development Services Department, City of Tacoma

1 **OFFICE OF THE HEARING EXAMINER**

2 **CITY OF TACOMA**

3 **TIMOTHY R. GOSSELIN,**

4 **Appellant,**

5 **v.**

6 **CITY OF TACOMA,**

7 **Respondent.**

**HEX 2016-041
(LU16-0195)**

**SUMMARY JUDGMENT
ORDER**

8

9 Timothy R. Gosselin is challenging the decision of the City of Tacoma Director of
10 Planning and Development Services (Director) denying his variance application for a marijuana
11 production or processing business located within 1,000 feet of Irving Park. Mr. Gosselin filed a
12 motion seeking summary judgment on the issue of whether a variance can be granted for such a
13 business when it is located near a park and playground. In response to the Gosselin motion, the
14 City made a cross-motion for summary judgment seeking a ruling upholding its position that a
15 variance is not available based on the subject building's proximity to a playground. In
16 considering the motions, the Hearing Examiner reviewed the following submissions:

- 17
- 18 1. Notice of Appeal by Applicant with Attachments and Exhibits 1-15.
 - 19 2. Appellant's Motion for Summary Judgment.
 - 20 3. Stipulation of the Parties.
 - 21 4. Declaration of Appellant Timothy Gosselin with Ex. 1, Attachments 2-15 and Ex. 2.¹

¹ The materials submitted do not include a full copy of Ex. 1 or Attachment 1.

1 heavily wooded steep bluff.

2 The site is zoned M-1 STGPD-ST-M/IC, Light Industrial. The zoning allows
3 warehousing, storage, vehicle service and repair, and other light industrial uses. *Tacoma*
4 *Municipal Code (TMC) 13.06.400.B.1; TMC 13.06.400.B.4.* Marijuana production and
5 processing is allowed within this zone, if applicable criteria are met. *TMC 13.06.400.B.5.*

6 Irving Park is located at 2502 S. Hosmer Street, in Tacoma at the intersection of South
7 25th Street and South Hosmer Street. Irving Park was established in 1946 when property owned
8 by the Tacoma School District was effectively transferred to the Metropolitan Park District of
9 Tacoma (Metro Parks). Irving Park is approximately 2.7 level acres. It is bounded on the east
10 by South Hosmer Street, on the north by South 25th Street, to the west by South Sprague
11 Avenue and the Sprague Avenue off-ramp from westbound Highway 16. To the south, the park
12 is bounded by vacant land that is a steep, heavily vegetated and wooded bluff that runs
13 downhill to Nalley Valley.

14 Irving Park has a basketball court, children's playground equipment that includes slides,
15 swings, and climbing apparatus, picnic tables, other bench-type seating, and an open grassy
16 area where sports such as soccer and softball can be played. Irving Park is northwest of the
17 subject property. The nearest point of Irving Park is approximately 500 to 525 feet from the
18 nearest point of the subject property.

19 Tax rolls maintained by the Pierce County Assessor show that Irving Park consists of
20 parcel numbers 28950001280 and 28950001290.³ Metropolitan Park District of Tacoma is
21 identified as the taxpayer for both parcels. Irving Park is owned and managed by the

³ The Stipulation contains a typographical error on the parcel numbers. The correct numbers are referenced in the text above.

1 Metro Parks. *Stipulation of the Parties.*

2 The City of Tacoma submitted two declarations in support of their Response to
3 Appellant’s Motion for Summary Judgment and Cross-Motion for Summary Judgment.⁴
4 Rebecca Smith, Director of Licensing and Regulation for the Washington State Liquor and
5 Cannabis Board (Board) indicates that she was the Marijuana Unit Manager for the Board in
6 2013. She states that in the Board’s regulations, playgrounds were intended to have more
7 protection, in general, from marijuana businesses than parks. She further declares that not
8 adding metropolitan park districts to the ownership paradigm in the definition of “playgrounds”
9 was an oversight and not an intentional omission. Ms. Smith did acknowledge that the Board
10 specifically included ownership by a metropolitan park district to the definition of a “park”
11 because it had been brought to the Board’s attention that, without this addition, parks might
12 have no protection in a jurisdiction like Tacoma where the metropolitan park district essentially
13 owns all public parks. She further asserts that the Board sees the metropolitan park district as
14 the functional equivalent of the city when it comes to ownership of a playground. *Smith*
15 *Declaration.*

16 Mark Lauzier signed a declaration as acting City Manager for the City of Tacoma. He
17 indicates that because the City of Tacoma has no parks department, Metro Parks fills that
18 function for the City. Metro Parks owns and operates public parks and provides recreational
19 services and opportunities to the public that would typically be provided by a city’s parks
20 department. The City sees Metro Parks as the functional equivalent of the City’s parks
21

⁴ The Appellant objects to the City’s cross-motion for summary judgment and the associated declarations. The material submitted is helpful in understanding the City’s position and will be considered on that basis. The facts contained in the declarations do not raise disputed issues of material fact necessary for resolution of the legal issue in controversy. Therefore, no further discovery or rebuttal is warranted.

1 department. To the extent the language of the Board's regulations fails to provide protection to
2 playgrounds owned by a metropolitan park district, similar to the protection provided to
3 playgrounds owned by a city, Tacoma will be seeking amendment of the Board's regulations.

4 *Lauzier Declaration.*

5 **Analysis**

6 Summary judgment is a procedure available to avoid unnecessary trials or hearings on
7 formal issues that cannot be factually supported and could not lead to, or result in, a favorable
8 outcome to the opposing party. *LaPlante v. State*, 85 Wn.2d 154, 158, 531 P.2d 299 (1975).

9 The summary judgment process is intended to eliminate a trial or hearing if only questions of
10 law remain for resolution and neither party contests facts necessary to reach a legal
11 determination. *Marincovich v. Tarabochia*, 114 Wn.2d 271, 274, 787 P.2d 562 (1990);
12 *Wilson v. Steinbach*, 98 Wn.2d 434, 656 P.2d 1030 (1982). In this case, the material facts
13 pertinent to the City's decision on the requested variance are not in dispute and the matter is
14 appropriate for summary judgment.

15 The parties have stated the legal issue on summary judgment in slightly different terms,
16 but the ultimate inquiry is whether Irving Park falls within the protection afforded playgrounds
17 under RCW 69.50.331(8)(a) and (8)(b), WAC 314-55-050(10), and TMC 13.06.565. The
18 Appellant contends Irving Park is not a playground within the governing definitions because it
19 is not owned by a city. The City argues that Irving Park should be considered a playground
20 under the definitions contained in WAC 314-55-010(24) because Metro Parks is the functional
21 equivalent of the City. In addition, the City insists excluding Irving Park's facilities from the

1 definition of a protected playground would be inconsistent with the intent of the Legislature and
2 the Washington State Liquor and Cannabis Board.

3 The Revised Code of Washington contains a statement regarding the scope of a local
4 government's ability to enact laws and ordinances relating to controlled substances, including
5 cannabis:

6 Cities, towns, and counties or other municipalities may enact only
7 those laws and ordinances relating to controlled substances that are
8 consistent with this chapter... Local laws and ordinances that are
9 inconsistent with the requirements of state law shall not be enacted
and are preempted and repealed, regardless of the nature of the code,
charter, or home rule status of the city, town, county or municipality.

10 *RCW 69.50.608*. This general state preemption of drug related laws limits the City of Tacoma's
11 authority to pass ordinances inconsistent with state statutes. The State of Washington has
12 addressed the permissible locations for cannabis related activities as follows:

13 Except as provided in (b) through (d) of this subsection, the state
14 liquor and cannabis board may not issue a license for any premises
15 within one thousand feet of the perimeter of the grounds of any
16 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.

17 *RCW 69.50.331(8)(a)*.

18 Local jurisdictions are allowed to reduce the 1,000-foot buffer for certain types of facilities, but
19 buffers for schools and playgrounds cannot be decreased:

20 (b) A city, county, or town may permit the licensing of premises
21 within one thousand feet but not less than one hundred feet of the
facilities described in (a) of this subsection, *except elementary*

1 *schools, secondary schools, and playgrounds*, by enacting an
2 ordinance authorizing such distance reduction, provided that such
3 distance reduction will not negatively impact the jurisdiction's civil
 regulatory enforcement, criminal law enforcement interests, public
 safety, or public health.

4 *RCW 69.50.331(8)(b)(emphasis added).*

5 The Washington State Liquor and Cannabis Board adopted administrative regulations
6 addressing the buffer requirements for cannabis related facilities and providing definitions for
7 relevant terms. The setback requirements provide:

8 (10) The WSLCB shall not issue a new marijuana license if the
9 proposed licensed business is within one thousand feet of the
10 perimeter of the grounds of any of the following entities. The
 distance shall be measured as the shortest straight line distance from
 the property line of the proposed building/business location to the
 property line of the entities listed below:

- 11 (a) Elementary or secondary school;
- 12 (b) Playground;
- 13 (c) Recreation center or facility;
- 14 (d) Child care center;
- 15 (e) Public park;
- 16 (f) Public transit center;
- 17 (g) Library; or
- (h) Any game arcade (where admission is not restricted to
 persons age twenty-one or older).

18 (11) A city or county may by local ordinance permit the licensing of
19 marijuana businesses within one thousand feet but not less than one
 hundred feet of the facilities listed in subsection (10) of this section
 except elementary and secondary schools, and playgrounds.

20

21 *WAC 314-55-050.*

1 The Board also adopted definitions, including a definition of playground that focuses on the
2 nature of the space and ownership:

3 (24) "Playground" means a public outdoor recreation area for
4 children, usually equipped with swings, slides, and other playground
5 equipment, owned and/or managed by a city, county, state or federal
6 government.

7 *WAC 314-55-010(24)*. The Board also defined a public park based on property characteristics
8 and ownership.

9 (25) "Public park" means an area of land for the enjoyment of the
10 public, having facilities for rest and/or recreation, such as a baseball
11 diamond or basketball court, owned and/or managed by a city, county,
12 state, federal government, or metropolitan park district. Public park
13 does not include trails.

14 *WAC 314-55-010(25)*. Unlike the definition of playground, the public park definition
15 specifically addresses ownership by a metropolitan park district.

16 The City of Tacoma adopted an ordinance addressing the location of cannabis
17 businesses that incorporates the definitions found in WAC 314-55-010:

18 3. For purposes of this Section and the standards applicable to state-
19 licensed marijuana uses, the terms and definitions provided in WAC
20 314-55 shall generally apply unless the context clearly indicates
21 otherwise.

22 *TMC 13.06.565.B.3*. The City of Tacoma location requirements for cannabis related businesses
23 parallel the state buffer zones by stating:

24 a. As provided in RCW 69.50.331 and WAC 314-55-050, marijuana
25 uses shall not be allowed to locate within 1,000 feet of elementary
26 schools, secondary schools, or playgrounds. For purposes of this
27 standard these uses are as defined in WAC 314-55.

1 *TMC 13.06.565*. Given this statutory and regulatory framework, the City evaluated
2 Mr. Gosselin's request for a variance from the 1,000-foot buffer between the playground at
3 Irving Park and the proposed cannabis production/processing site. The City concluded that it
4 could not vary the 1,000-foot setback because Irving Park contains a playground and
5 playgrounds are one of the uses that are not subject to local buffer reduction under RCW
6 69.50.331 and WAC 314-55-050.

7 Mr. Gosselin points out that the definition of a playground in the administrative
8 regulations, which have been incorporated by reference in the TMC, does not explicitly include
9 playgrounds owned by a metropolitan park district. The facilities at Irving Park comply with
10 that portion of the playground definition describing the physical characteristics of a playground.
11 However, the fact that Metro Parks holds title to the park property puts the facility outside the
12 parameters of the playground definition's requirement addressing ownership. The language of
13 the regulation contains a list of entities that must own a playground to fall within the definition.
14 The list does not contain metropolitan park districts. Mr. Gosselin argues that the plain
15 language of the regulation governs and that Irving Park does not qualify as a playground for
16 purposes of WAC 314-55-010(24) and by extension TMC 13.06.565, because it is not owned
17 by one of the identified entities.

18 The City maintains that the clear intent of the state statutes and regulations is to provide
19 enhanced protection to playgrounds and that omitting playgrounds owned by metropolitan park
20 districts from the extra buffer protection for schools and playgrounds is inconsistent with the
21 intent and purpose of state law. The City has submitted a sworn declaration from Rebecca

1 Smith, Director of Licensing and Regulation for the State of Washington Liquor and Cannabis
2 Board indicating that the Board had no intent to omit playgrounds owned by metropolitan parks
3 from the definition of playgrounds with 1,000-foot buffer protection.⁵ She further indicates that
4 failure to include playgrounds owned by a metropolitan park district in the regulation was an
5 omission the Board will be moving to correct.

6 The Planning and Development Services Director's decision concluded that it would be
7 an absurd result to interpret WAC 314-55-010(24) to exclude playgrounds owned by Metro
8 Parks from the 1,000-foot buffer protection. To do so would leave playgrounds in parks within
9 the City of Tacoma with reduced, rather than enhanced, protection from cannabis uses. The
10 Director's concern over lack of buffer protection is valid given the fact that Metro Parks owns
11 the vast majority of public playgrounds in the City of Tacoma. Leaving a large segment of
12 playgrounds in public parks without increased buffer protection, based on ownership alone,
13 makes no sense to the City.

14 Unfortunately, the language used in WAC 314-55-010(24) to define the class of
15 protected playgrounds omits any reference to playgrounds owned by metropolitan park districts.
16 This appears to be an oversight and there is no evidence that such playgrounds were intended to
17 fall outside the protected class. However, a discrete list cannot be expanded through
18 "interpretation." As the court held in *State v. Delgado*, 148 Wn.2d, 723, 727, 63 P.3d 792
19 (2003), the court cannot add statutory language to correct an omission:

20 The statute expressly lists those qualifying prior convictions which
21 expose an offender to a sentence of life without parole as a two-

⁵ Use of an individual's comments regarding intent cannot be used to establish the intent of the larger body, like the Legislature. The court in *Scott v. Cascade Structures*, 100 Wn.2d 537, 544, 673 P.2d 179 (1983) ruled: "We have consistently held that the comments of individual legislators cannot be used to establish the intent of the entire legislative body." (citing *Woodson v. State*, 95 Wn.2d 257, 264, 623 P.2d 683 (1980)).

1 strike persistent offender. The statute ends with the limiting
2 language 'of an offense listed in (b)(i) of this subsection.' Statutory
3 rape is not listed. We conclude this list of predicate strike offenses is
4 exclusive, and we can find no basis to add any offenses not listed.

5 E.g., *Dot Foods Inc. v. Dep't of Revenue*, 166 Wn.2d 912, 920, 215 P.3d 185 (2009)(To
6 achieve such an interpretation, we have to import additional language into the statute that the
7 Legislature did not use. We cannot add words or clauses to a statute when the Legislature has
8 chosen not to include such language); *State v. J.P.*, 149 Wn.2d 444, 450, 69 P.3d 318 (2003)
9 (cannot add words or clauses to an unambiguous statute). The *Delgado* court went on to
10 observe that the courts have long refrained from inserting language in statutes, even to correct a
11 legislative error. *Delgado*, 148 Wn.2d at 730.

12 The City is asking that the regulation defining playgrounds be interpreted to expand
13 coverage to entities that are not contained in the adopted regulation. The tenants of statutory
14 construction do not allow the addition of language to a duly adopted regulation, no matter what
15 the subjective intent of the legislative or administrative body might have been. In this case, the
16 plain language of the regulation defining playground contains a list of covered owners that does
17 not include metropolitan park districts. Statutory interpretation does not support adding a new
18 entity to the existing list.

19 The City further argues that Metro Parks should fall within the definition of a city
20 owned playground under WAC 314-55-010(24) because Metro Parks is the functional
21 equivalent of a city. While it is true that Metro Parks operates much like the parks department
of a city, there is no legal support for actually considering Metro Parks a city. Metro Parks has

1 a much more limited scope of functions than a municipality and simply cannot be equated to
2 the term “city.”

3 The evidence strongly suggests that playgrounds owned by metropolitan park districts
4 should be included within the definition of playgrounds receiving added protection from
5 cannabis businesses. The appropriate remedy for the oversight that led to this dilemma is to
6 amend the definition of playgrounds to include playgrounds owned by metropolitan park
7 districts. The Liquor and Cannabis Board can undertake this amendment, and apparently plans
8 to do so. The City of Tacoma can also modify its own ordinance to extend 1,000-foot buffers
9 to playgrounds owned by metropolitan park districts, rather than relying on the state
10 regulation’s definition. In either case, under the currently operative language, playgrounds
11 owned by metropolitan park districts are not within the class of playgrounds that must be
12 protected by a 1,000-foot buffer.

13 The Director rejected the variance application filed by Mr. Gosselin because he was of
14 the opinion that playgrounds owned by Metro Parks should be covered by the definition of
15 playground in WAC 314-55-010(24). Given the ruling in this decision that the definition of
16 playground in WAC 314-55-010(24) does not extend to playgrounds owned by metropolitan
17 park districts, the merits of the variance application should be considered. This case is properly
18 remanded for consideration of the merits of Mr. Gosselin’s variance application under the facts
19 and circumstances specific to his site. Irving Park is not a playground given protection by the
20 terms of WAC 314-55-010(24). However, Irving Park remains a public park under the
21 definitions of WAC 314-55-010(25), and the variance requested should be considered

1 substantively on remand.

2 Based upon the undisputed facts and the analysis above, the Hearing Examiner enters
3 the following:

4 **ORDER**

5 Mr. Gosselin's Motion for Summary Judgment on the issue of whether Irving Park is a
6 protected playground under the terms of currently governing laws, regulations, and ordinances
7 is GRANTED. Irving Park is a public park, but not a playground, under currently governing
8 regulations. Accordingly, the City's Cross-Motion for Summary Judgment is DENIED. This
9 case is remanded to Planning and Development Services for further consideration of the
10 substance of Mr. Gosselin's variance request.

11 **DATED** this 22nd day of February, 2017.

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13 **PHYLLIS K. MACLEOD, Hearing Examiner**

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1 **NOTICE**

2 **RECONSIDERATION/APPEAL OF EXAMINER'S DECISION**

3 **RECONSIDERATION TO THE OFFICE OF THE HEARING EXAMINER:**

4 Any aggrieved person or entity having standing under the ordinance governing the matter, or
5 as otherwise provided by law, may file a motion with the Office of the Hearing Examiner
6 requesting reconsideration of a decision or recommendation entered by the Examiner. A
7 motion for reconsideration must be in writing and must set forth the alleged errors of
8 procedure, fact, or law and must be filed in the Office of the Hearing Examiner within 14
9 calendar days of the issuance of the Examiner's decision/recommendation, not counting the
10 day of issuance of the decision/recommendation. If the last day for filing the motion for
11 reconsideration falls on a weekend day or a holiday, the last day for filing shall be the next
12 working day. The requirements set forth herein regarding the time limits for filing of
13 motions for reconsideration and contents of such motions are jurisdictional. Accordingly,
14 motions for reconsideration that are not timely filed with the Office of the Hearing Examiner
15 or do not set forth the alleged errors shall be dismissed by the Examiner. It shall be within
16 the sole discretion of the Examiner to determine whether an opportunity shall be given to
17 other parties for response to a motion for reconsideration. The Examiner, after a review of
18 the matter, shall take such further action as he/she deems appropriate, which may include the
19 issuance of a revised decision/recommendation. (*Tacoma Municipal Code 1.23.140*)

20 **NOTICE**

21 **APPEAL TO SUPERIOR COURT OF EXAMINER'S DECISION:**

Pursuant to the Official Code of the City of Tacoma, Section 1.23.160, the Hearing Examiner's
decision is appealable to the Superior Court for the State of Washington. Any court action to
set aside, enjoin, review, or otherwise challenge the decision of the Hearing Examiner shall be
commenced within 21 days of the entering of the decision by the Examiner, unless otherwise
provided by statute.



**VARIANCE PERMIT
APPLICATION FOR:**

FILE NO.: LU16-0195

Timothy Gosselin
3511 N Union Ave
Tacoma, WA 98407

SUMMARY OF REQUEST:

A Variance request to allow a marijuana producer/processor to be located within 1,000 feet of a park. The proposed marijuana use would be located approximately 500 feet from Irving Park. The site is located in the "M-1 STGPD-ST-M/IC" Light Industrial, South Tacoma Ground Water Protection District and South Tacoma Manufacturing/Industrial Center.

LOCATION:

2733 & 2725 S. Ash Street; Parcel Nos.: 2855000280 & 2855000290

SUMMARY OF DECISION on REMAND:

The request for a Variance is **Approved**.

Notes:

The appeal period on this decision closes April 12, 2017, and the effective date of this decision is the following business day, provided no requests for reconsideration or appeals are timely filed as identified in APPEAL PROCEDURES of this report and decision.

The Director has jurisdiction in this matter per *TMC* 13.05.030. The applicant bears the burden of proof to demonstrate the proposal is consistent with the provisions of the *TMC*, the applicable provisions and policies of the City's *Comprehensive Plan*, and other applicable ordinances of the City.

**FOR ADDITIONAL INFORMATION CONCERNING THIS LAND USE PERMIT PLEASE
CONTACT:**

Lisa Spadoni
Planning and Development Services Department
747 Market Street, Room 345, Tacoma, WA 98402
253-591-5281 or lspadoni@cityoftacoma.org

SUMMARY OF RECORD

The following attachments and exhibits constitute the administrative record:

Attachments:

- Attachment "A": Vicinity maps and site plan
- Attachment "B": Photographs of the site and Irving Park

Exhibits¹:

- Exhibit "A": Applicant's Justification for the Variance
- Exhibit "B": Public Comments
- Exhibit "C": Applicant's response to Public Comments

FINDINGS

Proposal:

1. The applicant requests a variance to allow a marijuana producer/processor to be located within 1,000 feet of a park. The proposed marijuana use would be located approximately 500 feet from Irving Park. The *Tacoma Municipal Code (TMC)* requires that marijuana producers/processors be located more than 1,000 feet from public parks and other stated uses.

Project Site:

2. The site is located at 2733 and 2725 S. Ash Street, within the "M-1 STGPD-ST-M/IC" Light Industrial, South Tacoma Ground Water Protection District and South Tacoma Manufacturing/Industrial Center. The site consists of two parcels and is approximately 15,500 square feet. The building located on site is an approximately 13,000 square foot, single-story structure.
3. The site is relatively flat with a slight upward grade from south to north and has frontage on S. Ash Street to the west and alley access to the east. It is located approximately 85 feet from the intersection of S. Ash Street and Center Street on the north side of the Nalley Valley. South Ash Street dead-ends approximately 85 feet north of the site.

Surrounding Area:

4. The larger area is generally known as the Nalley Valley, a low, flat area historically and currently used and zoned as a manufacturing/ industrial area. The Nalley Valley in this area is generally zoned "M-2" Heavy Industrial at the lowest point of the valley and zoned "M-1" Light Industrial on the north and south sides of the valley as it begins to slope upward. The steeper slopes and areas at the top of slopes are generally zoned residential.
5. The properties immediately surrounding the subject site are developed with light industrial warehouse and manufacturing businesses and are also located in the "M-1 STGPD-ST-M/IC" Districts and Overlay. The properties across Center Street to the south are located in the "M-2" Heavy Industrial District and the "STGPD-ST-M/IC" District and Overlay.
6. Approximately 100 feet north of the subject site, the valley slopes steeply upward and is zoned "R-2" Single-family dwelling district. The steeply sloped properties to the north and northwest are undeveloped and are owned by the City of Tacoma and/or the Metropolitan

¹ All Exhibits are contained within associated file of the Planning and Development Services Department. They are referenced and incorporated herein as though fully set forth.

Park District of Tacoma.

7. Irving Park is located approximately 500 feet to the northwest of the subject site at the top of the steep slopes. It is at an elevation approximately 90 feet higher than the subject site. The park is developed with a playground containing swings, a play structure with slide, and benches, and with a basketball court and large open fields. The park is owned and managed by Metro Parks Tacoma.
8. There is no direct vehicle or pedestrian connection between Irving Park and subject site. The shortest walking or driving route is approximately 1,875 feet (0.35 miles) along Center Street, S. Wilkeson Street, and S. 25th Street.

Additional Information:

9. The applicant's justification for the variance application is marked as an Exhibit to this report and decision. In summary, the applicant states the following:
 - State Law (RCW 69.50.331(8)(a)) indicates that the state liquor and cannabis board may not issue a license for any premises within 1,000 feet of the perimeter of the grounds of sensitive uses including playgrounds and public parks. The State has given local governments the authority to reduce the buffer distance to as low as 100 feet from certain uses including public parks, but not including playgrounds. Consistent with this, the City of Tacoma adopted *TMC 13.06.565.C.11* Location requirements. This section requires a 1,000 buffer from playgrounds and public parks. However, the City reduced the buffer for marijuana retail uses in the downtown core to 500 feet from public parks.
 - WAC 314-55-010 provides the following definitions for a park versus a playground:

"Playground" means a public outdoor recreation area for children, usually equipped with swings, slides, and other playground equipment, owned and/or managed by a city, county, state, or federal government.

"Public park" means an area of land for the enjoyment of the public, having facilities for rest and/or recreation, such as a baseball diamond or basketball court, owned and/or managed by a city, county, state, federal government, or metropolitan park district. Public park does not include trails.
 - Irving Park is owned by the Metropolitan Park District of Tacoma, not by the City of Tacoma. Therefore, it meets the definition of a public park, but does not meet the definition of a playground, as presently defined. The state legislature knowingly made this ownership distinction in the definitions.² As such, the City is not prevented from granting a variance to the 1,000 foot distance requirement by anything in the state definitions. Such a grant of variance would be similar in effect to how it has reduced the distance requirement in the downtown core.
 - The purpose of the 1,000 foot buffer is to shield certain uses from exposure to marijuana uses, yet many authorized operations of retail, production and processing remain highly visible. Even with a reduced buffer, this site will exceed any expectation for shielding and will be shielded even better than most sites with a 1,000 foot buffer. The site is not on a main street and is not exposed to any pedestrian traffic. Since the street is a dead-end, there is limited vehicle traffic. It is shielded to the north by a high, heavily wooded bluff

² The Director would note here that the definition in question is not promulgated by the state legislature, but rather at the agency level, in this case, by the state Liquor and Cannabis Board.

and is not visible from the sensitive use, Irving Park. To get close to this site, an individual would have to drive or walk approximately ½ mile and would pass through other areas that are approved for marijuana retail sales and processing. Since the natural topography and vegetation in the area provides an even more effective buffer and barrier than the 1,000 foot separate requirement, the strict application of the code is unreasonable in this circumstance.

- The request is the minimum necessary to afford relief from the hardship and conditions could be placed to address concerns such as restrictions on signage, odor control or any visible activities.
 - The proposal would allow a reasonable use of the site consistent with all other zoning requirements and consistent with surrounding uses. Production and processing uses generally do not publicize their locations and produce no unusual sounds, odors or traffic that would cause them to stand apart from other authorized uses. The unique location of the site and topography in relation to Irving Park create an even more effective buffer than what the code otherwise requires.
 - The proposal is consistent with the Comprehensive Plan policies for continued growth and development, diversification and expansion of Tacoma's economic base; cultivation of a business culture that allows existing businesses to grow and draws new firms and encourages homegrown enterprises; and creating robust and thriving employment centers. The Nalley Valley area is housing many other marijuana businesses and this is facilitating the growth of an industrial center that provides opportunities for economic development and job growth.
 - The proposal is beneficial to the general public as it facilitates specific goals of the Comprehensive Plan and does so without negative impact to the community.
10. On December 8, 2016, the Director issued a Decision denying the applicants request for a variance concluding that Irving Park was both a park and playground and that as a playground, the City did not have the authority to grant a variance to the 1,000 foot separation distance between a marijuana production/processing facility and a playground. The Decision did not provide further consideration of the substance of the applicant's request. The applicant appealed the Decision of the Director to the Hearing Examiner. The Hearing Examiner issued an Order that indicated Irving Park is a public park but not a playground under current governing regulations and remanded the case to the Director for further consideration of the substance of the variance request.

Notification and Comments:

11. The application was determined to be complete on August 15, 2016. Written notice of the application was mailed to owners of property within 100 feet of the site as indicated by the Pierce County Assessor/Treasurer's records, the neighborhood council, and qualified neighborhood groups, allowing for 14 days of comment period. Public notice was posted on the site within seven days of the start of the comment period.
12. Two public comment letters were received in opposition to the proposed variance. In summary, the Director understands the concerns to be as follows:
- The processing plant would be within 1,000 feet of Irving Park, a neighborhood park that includes a playground and other amenities for the enjoyment of the public.
 - The ownership of the park by Metro Parks of Tacoma is a governmental agency with an elected board and executive and therefore the public park/playground meets the requirements of WAC 314-55-010 as a playground and park.

- Even though Irving Park is on a bluff, children could climb the fence and explore the area outside the park. Parks need to be safe areas for children to play with no drugs nearby.
- Marijuana processing should only be in heavy industrial sites. Approval of this request would set a precedent for similar requests.

13. The public comments were provided to applicant on October 3, 2016. In summary, the Director understand the applicant's response to be as follows:

- Irving Park is not owned by a governmental agency within the definition of playground in the WAC. Therefore, while it qualifies as a park, it does not meet the definition of a playground under the WAC.
- There is no credible evidence that a nondescript marijuana processing facility within an industrial zone would jeopardize the safety or welfare of children even if it were in closer proximity to a park.
- Children should be protected from exposure to drugs. That concern could be addressed if the variance was conditioned that the building not be allowed external markings or signs that associate it with marijuana production and not emit identifying odors. This would prevent any children who explored the steep bank to the industrial area below from knowing what the building was used for.
- The site is in an industrial area and should be allowed to house a viable economic use.

Additional Regulations and Policies:

14. TMC Section 13.06.400.C.5 allows for marijuana production and processing within the "M-1" Light Industrial District, subject to additional requirements contained in Section 13.06.565.

15. TMC Section 13.06.565 contains the regulations pertaining to the establishment of marijuana uses including signage standards and standards to control odors. It also includes the intent of marijuana regulation, stating in part:

It is the intent of these regulations to ensure that such state-licensed uses are located and developed in a manner that is consistent with the desired character and standards of this community and its neighborhoods, minimizes potential incompatibilities and impacts, and protects the public health, safety and general welfare of the citizens of Tacoma. Recognizing the voter-approved right to establish certain types of marijuana businesses, it is also the intent of these regulations to provide reasonable access to mitigate the illicit marijuana market and the legal and personal risks and community impacts associated with it.

16. TMC Section 13.06.565.C.1 indicates that Marijuana uses (marijuana producer, marijuana processor, marijuana researcher, and marijuana retailer) shall only be permitted as allowed under RCW 69.50 and WAC 314-55.

17. TMC Section 13.06.565.C.11 includes the location requirements for marijuana uses including the following:

- d. Marijuana producer, processor and researcher uses shall not be allowed to locate within 1,000 feet of public parks, recreation centers or facilities, libraries, child care centers, game arcades, and public transit centers. For purposes of this standard, these uses are as defined in WAC 314-55.

18. WAC 314-55-010 includes the following definitions for playground:

"Playground" means a public outdoor recreation area for children, usually equipped with

swings, slides, and other playground equipment, owned and/or managed by a city, county, state, or federal government.

19. *TMC* Section 13.06.645.B.1.b includes the criteria required for approval of variance to development regulations such as buffer or setback distance.

20. The *Comprehensive Plan*, which sets forth policy regarding development in the City of Tacoma, provides the following policy guidance relative to industrial development:

GOAL DD-9 | Support development patterns that result in compatible and graceful transitions between differing densities, intensities and activities.

Policy DD-9.5 Protect non-industrial zoned parcels from the adverse impacts of activities on industrial zoned parcels.

Policy DD-9.6 Buffer between designated Manufacturing/Industrial Centers and adjacent residential or mixed-use areas to protect both the viability of long-term industrial operations and the livability of adjacent areas.

CONCLUSIONS³

1. As the Hearing Examiner has determined that Irving Park does not meet the definition of a playground, but does meet the definition of a park, then evaluation of the variance request against the criteria identified in *TMC* 13.06.645.B.1 is made as follows:

a. *The restrictive effect of the specific zoning regulation construed literally as to the specific property is unreasonable due to unique conditions relating to the specific property, and which do not result from the actions of the applicant, such as: parcel size; parcel shape; topography; location; documentation of a public action, such as a street widening; proximity to a critical area; location of an easement; or character of surrounding uses.*

The site is located at the edge of the Nalley Valley, at the bottom of a steep topographic decline. There is an elevation difference of approximately 90 feet between the site and Irving Park and the slope between the site and park is undeveloped and heavily wooded. In addition, there is no direct street or pedestrian connectivity between the site and the Park. The shortest route between the site and the park is approximately 1,875 lineal feet, substantially greater than the code required 1,000 foot buffer distance. The Director concludes that these are unique conditions related to the property that make the restrictive effect of the zoning regulation unreasonable. See Attachments "A" and "B"; Exhibit "A"; Findings 1-10 and 17.

b. *The requested variance does not go beyond the minimum necessary to afford relief from the specific hardship affecting the site*

The variance does not go beyond the minimum necessary to afford relief from the hardships affecting the site since the request is for only the amount of reduction needed to allow the marijuana use. See Attachment "A"; Exhibit "A"; Findings 1-2 and 7.

c. *The grant of the variance would allow a reasonable use of the property and/or allow a more environmentally sensitive site and structure design to be achieved than would*

³ Conclusions are based upon the applicable criteria and standards set forth in the *TMC*, the policies of the *Comprehensive Plan*, and the Attachments and Exhibits listed herein. Any conclusion of law hereinafter stated which may be deemed a finding of fact herein is hereby adopted as such.

otherwise be permitted by strict application of the regulation, but would not constitute a grant of special privilege not enjoyed by other properties in the area

The grant of the variance will allow a reasonable use of the site since marijuana production and processing are allowed uses in the "M-1" Light Industrial zone district and the topography, vegetation and street/pedestrian connectivity provide an alternative buffer between the use and nearby park. The Director concludes that the granting of the variance would not constitute a grant of special privilege not enjoyed by other properties in the area, since other properties could be granted similar relief if they could demonstrate similar circumstances, and other marijuana uses do, in fact, exist in the Nalley Valley. See Attachment "A" and "B"; Exhibit "A"; Findings 1-10, 14 and 15

- d. *The grant of the variance will not be materially detrimental or contrary to the Comprehensive Plan and will not adversely affect the character of the neighborhood and the rights of neighboring property owners.*

The site is located in the Nalley Valley, an area historically and currently used for light and heavy industry. It is in an industrial zone district and further protected as an industrial area under the South Tacoma Manufacturing /Industrial Overlay District. It is surrounded by other light and heavy manufacturing facilities. The site is separated from residential and park uses to the north and northwest by a 90 foot topographic change and by the undeveloped and heavily vegetated nature of the hillside as it rises out of the valley. In addition, there is no direct pedestrian or vehicle connectivity between the site and park and residential uses to the north. The hillside creates a visual and physical barrier between the industrial and park use. The Director would also note that the specific code provisions of TMC 13.06.565 will apply, including sections pertaining to the control of odors and signage standards. Therefore, the Director concludes that the reduction in separation distance between the proposed marijuana production and processing use and Irving Park will not be contrary to the Comprehensive Plan or adversely affect the character of the neighborhood or rights of neighboring property owners. See Attachment "A" and "B"; Exhibit "A"; Findings 1-20.

- e. *The grant of the variance will not cause a substantial detrimental effect to the public interest*

The proposal is consistent with the Comprehensive Plan and will not have a detrimental effect on neighboring properties. Therefore, it will not cause a substantial detrimental effect to the public interest.

- f. *Standard corporate design and/or increased development costs are not cause for variance.*

No information has been submitted to indicate that standardized corporate design and/or increased development costs were cause for the variance request.

DECISION

Based upon the above findings and conclusions, the requested Variance is **Approved**.

ORDERED this 29th day of March, 2017.



Peter Huffman
Director, Planning and Development
Services Department

FULL DECISION TRANSMITTED by first class mail and electronic mail to:

Timothy Gosselin, 3511 N Union Ave, Tacoma, WA 98407
Venus Dergan; vadergan@yahoo.com
Heidi White; batlmaidn3@aol.com

SUMMARY OF DECISION TRANSMITTED by first class or electronic mail to the following:

All property owners within 100 feet of the subject site
Central Neighborhood Council
Metropolitan Park District, Doug Frasier (DougF@tacomaparks.com)
Neighborhood Planning Team Members: Brian Boudet, Ian Munce, and Carol Wolfe

APPEAL PROCEDURES

Any request for RECONSIDERATION and/or any APPEALS must be submitted in the applicable manner as outlined below on or before **April 12, 2017**.

RECONSIDERATION:

Any person having standing under the ordinance governing this application and feeling that the decision of the Director is based on errors of procedure or fact may make a written request for review by the Director within fourteen (14) days of the issuance of the written order. This request shall set forth the alleged errors, and the Director may, after further review, take such further actions as deemed proper, and may render a revised decision. A request for RECONSIDERATION of the Director's decision in this matter must be filed in writing to the staff contact listed on the first page of this document.

APPEAL TO HEARING EXAMINER:

Any decision of the Director may be appealed by any aggrieved person or entity as defined in Section 13.05.050 of the *Tacoma Municipal Code*, within fourteen (14) days of the issuance of this decision, or within seven (7) days of the date of issuance of the Director's decision on a reconsideration, to appeal the decision to the Hearing Examiner.

An appeal to the Hearing Examiner is initiated by filing a Notice of Appeal accompanied by the required filing fee of **\$325.26**. Filing of the appeal shall not be complete until both the Notice of Appeal and required filing fee has been received. **THE FEE SHALL BE REFUNDED TO THE APPELLANT SHOULD THE APPELLANT PREVAIL.** (Pursuant to Section 2.09.020 of the *Tacoma Municipal Code*, fees for appeals shall be waived for qualifying senior citizens and persons who are permanently handicapped who are eligible for tax exemption because of financial status.)

The Notice of Appeal must be submitted in writing to the Hearing Examiner's Office, Seventh Floor, Tacoma Municipal Building, and shall contain the following:

- (1) A brief statement showing how the appellant is aggrieved or adversely affected.
- (2) A statement of the grounds for the appeal, explaining why the appellant believes the administrative decision is wrong.
- (3) The requested relief, such as reversal or modification of the decision.
- (4) The signature, mailing address and telephone number of the appellant and any representative of the appellant.