

Greater Maple Valley Unincorporated Area Council
P.O. Box 101
Maple Valley, WA 98038

June 7, 2016

To: King County Council TrEE Committee

Re: Proposed Ordinance 2016-0236

Chairman Dembowski,

On May 2, 2016, Ordinance 2016-0236 related to zoning and Marijuana production and processing facilities was proposed by Councilman Dunn. After its first reading, it was referred your Transportation, Economy and Environment (TrEE) Committee.

Proposed Ordinance 2016-0236 seeks to change **King County Code (K.C.C.) 21A.08.090: A. Resource land uses**. to reduce the threshold that triggers the need for a Conditional-Use permit (CUP) for Marijuana production and processing facilities from 2,000 sq ft to 500 sq ft. While this certainly is welcome, it is wholly inadequate to solve a variety of problems repeatedly identified by Rural Area citizens.

Herein we provide our comments on proposed Ordinance 2016-0236 and offer potential solution paths for your committee and the Council to consider.

Introduction

King County's Unincorporated Areas are comprised of four distinct areas: Urban Unincorporated, Rural Area, Agricultural Production District, and Forest Production District. Notwithstanding the current 4-mo Moratorium, existing King County Code allows siting of Marijuana businesses in some of these areas. The first two areas listed--Urban Unincorporated and Rural Area--primarily are residential and, thus, present unique problems which require careful consideration.

Potential Solutions

We see several paths for the TrEE Committee to explore as it considers potential changes to King County Code regarding siting of Marijuana Producers (i.e., Growers) and Processors:

1. A full ban in the Rural Area, similar to that in place in Snohomish County (its full ban covers its entire Unincorporated Area), as well as the City of Kent and many other jurisdictions. This would require Marijuana Retail Businesses within King County to obtain their product from outside King County's Rural Area, much of which is residential. Please note according to existing King County Code (K.C.C.), if one lives in an Urban Residential Area, Marijuana Production (**K.C.C. 21A.08.080 Manufacturing land uses**) and Processing (**K.C.C. 21A.08.090 Resource land uses**) are not allowed. So, a permanent ban already exists in residential areas, but only within the Urban Growth Boundary. This apparent

“double standard” might be the crux of the problem that bothers so many Rural Area citizens. In addition, **K.C.C. 21A.30.085 (para. J.4.) Home occupations** and **K.C.C. 21A.30.090 (para. J.) Home industry** both state Recreational Marijuana businesses (producers, processors, and retailers) are not allowed uses.

2. A zoning code change which requires parcel size to be at least 20, or even 40 acres (note: Current King County Code sets the minimum parcel size at 4 1/2 acres). This would obviate siting of any Marijuana Producers or Processors in “residential neighborhoods.”
3. Allow Marijuana Producers or Processors to be sited only in King County’s Agricultural Production District and Commercial/Industrial areas.
4. No matter what the Council decides, please update King County Code to:
 - a. Allow citizens to provide Public Comment on all Marijuana Permit Applications;
 - b. Allow citizens to Appeal all Marijuana Permit Applications; and
 - c. Reduce the trigger for a Conditional-Use Permit (CUP) to zero.

Although proposed Ordinance 2016-0236 essentially would reduce the threshold that triggers the need for a CUP, we do not see this as a palatable solution. Yes, this would result in more CUPs, but it would still be up to the King County Department of Permitting and Environmental Review (DPER) to determine what Conditions to impose, if any, and, then, to enforce them, which it is not well-equipped to do.

We believe a ban in the Rural Area is the only viable option and, thus, recommend it be given strong consideration. Such a K.C.C. revision would make things fair, satisfy Rural Area residents concerns, and still meet Marijuana Retailers needs.

Rationale

Our detailed rationale for a full ban on siting of Marijuana Producers and Processors in the Rural Area is as follows:

1. **RESIDENTIAL NEIGHBORHOODS.** At the April 6 King County Council’s Committee-of-the-Whole meeting held in Ravensdale, many people who live in the Rural Area voiced their very strong and reasoned opposition to the existing Zoning Code that allows Marijuana Producers and Processors in their residential neighborhoods.
2. **PUBLIC SAFETY.** At that same meeting King County Sheriff Urquhart described in detail that, due to continual budget cuts his office has had to absorb, he can provide very little police protection in the Rural Area. We who live in the Rural Area have known this to be the case for several years. This is possibly the biggest issue voiced by Rural Area residents. The Sheriff’s Office already is ill-equipped (and suffering continual budget cuts) to meet existing safety needs in the Rural Area. Compounding such an untenable situation with the addition of Marijuana Production and Processing Operations simply makes no sense.
3. **CODE ENFORCEMENT.** At the same time budget cuts to King County’s Department of Permitting and Environmental Review (DPER), which has made them essentially a fee-based operation, have reduced Code Enforcement a complaint-only-driven service in the Rural Area, and even at that, a very, very limited service.
4. **ONSITE SEPTIC SYSTEMS.** These are used throughout the Rural Area. They

certainly are not the place for Marijuana Producers or Processors to dump their chemicals, pesticides, etc., if we want to continue to improve Public Health, as well as clean up our shared environment. The *“Regulatory Guidance for Cannabis Operations, Version 3.0,”* April 2016, p. 10 (a document prepared by a partnership of the municipalities--including King County--and industry representatives) states the following:

“Wastewater that results from any growing, manufacturing, cleaning, or rinsing processes is considered an industrial waste (industrial wastewater) and is subject to local, state and federal regulations. This includes water used in extraction, hydroponic irrigation and the manufacture of edible products.”

In the same reference the King County Industrial Waste Pretreatment Program and Stormwater Services states:

“No business may discharge industrial wastewater into an onsite septic system....Industrial wastewater discharges to septic systems can damage them and cause harm to the environment.”

KC DPER is understaffed to properly enforce wastewater and environmental violations of issued Marijuana production and processing permits.

5. **ODOR.** “Aromas” generated by Marijuana production and processing can be overwhelming. Our clean air agencies have the authority to regulate odors that *“may unreasonably interfere with another property owner’s use or enjoyment of his property”* (ref.: WAC 173-400-040(5)). Odor complaints to KC DPER will have little potential to be addressed in a timely manner. At a minimum an Odor Management Plan (OMP) should be required for any areas of outdoor growing or processing or ventilation of any structure used to produce or process marijuana. The OMP should ensure odors from chemicals or products used in or resulting from production and/or processing are undetectable offsite.
6. **NOISE.** Noises associated with Marijuana production and processing have no place in residential areas. Further, odor problems cannot be “fixed” with noisy and obtrusive massive blower systems, which also have no place in residential areas. This problem is untenable.

Rural Area residents are very alarmed about siting such Marijuana operations in their neighborhoods.

Washington State WACs and RCWs

The Municipal Research & Services Center (MRSC) states:

“The state liquor and cannabis board (LCB) will not issue licenses for marijuana producers, processors, and retailers on property that is zoned residential and used as a personal residence. That is because of the LCB’s need to be able to enter the premises for inspections without a warrant – see [WAC 314-55-015\(5\)](#)”

WAC 314-55-015 General information about marijuana licenses. states:

“(5) The board will not approve any marijuana license for a location where law enforcement access, without notice or cause, is limited. This includes a personal residence.”

The Washington State L&CB explicitly doesn’t want to pursue search warrants for a personal residence in a residential neighborhood. Once again,

existing **K.C.C. 21A.08.080 and .090** already partially address this in that if one lives in an Urban Unincorporated Area, Marijuana production and/or processing is not allowed. So, a permanent ban already exists in residential areas, but on within the Urban Growth Boundary. This is both technically conflicting and inconsistent.

Finally, the following is in the MSRC's Frequently Asked Questions (FAQ's) section:

Q: "If a city has determined that all of the land within the city limits is either zoned residential or is within the 1,000-foot buffer zones provided by **RCW 69.50.331(8), is the city still required to allow recreational marijuana businesses?"**

A. "No, in that circumstance the state laws prohibit the locating of any recreational marijuana businesses within your boundaries...." (ref.: MSRC's "Frequently Asked Questions")

Once again, King County's Rural Area is residential and should be treated as such.

Neighboring Counties

King County's three neighboring Counties have banned Marijuana businesses from siting in their Rural Areas. Kitsap (*"The proposed use shall share characteristics in common with,...., those uses listed in the land use zone in which it is to be located."* Ordin. 512-2013) or Snohomish (*"...compatibility...with the existing rural character."* Ordin. 15-009, 5/24/15) Counties do not allow Marijuana businesses in their Rural Areas and, in fact, only allow them in their "Rural Industrial" zones. Pierce County does not allow Marijuana businesses in their Unincorporated Areas.

The MRSC provides a wealth of information on County and City Ordinances in place throughout the State including an interactive map (see <http://mrsc.org/Home/Explore-Topics/Legal/Regulation/Recreational-Marijuana-A-Guide-for-Local-Governmen.aspx#table>).

King County, which has a far more residential Rural Area (mostly residential housing, not farms) than any of its three neighboring counties, appears to be an outlier, as it has even more reason to not permit Marijuana businesses in its Rural Area.

Conclusions

We see a ban for siting of Marijuana Producers and Processors in the Rural Area as the only reasonable solution given the myriad of concerns voiced by so many, many citizens. Such a ban would still allow Marijuana Producers (**K.C.C. 21A.08.090 Resource land uses**) and Processors (**K.C.C. 21A.08.080 Manufacturing land uses**) in the Agriculture (A), Community Business (CB), Regional Business (RB), and Industrial (I) zones.

The overriding issues of Public Safety, Public Health, Environmental Degradation, Odor, Noise, and Code Non-enforcement make approving a permanent ban in King County's Rural Area the only reasonable choice.

Thank you in advance for your careful consideration of our Written Comments.

Sincerely,

Steve Hiester
Chairman, Greater Maple Valley Unincorporated Area Council