



INFORMATIONAL MEMORANDUM

TO: Finance Committee
FROM: Laurel Humphrey, Council Analyst
CC: Mayor Ekberg
DATE: September 12, 2019
SUBJECT: Marijuana Retail Zoning Considerations

ISSUE

Chair McLeod has requested the Committee review considerations around expanding opportunities for marijuana retail establishments through zoning. After a preliminary discussion on February 25, 2019, information requested by Committee members includes other cities’ experiences, public safety concerns, financial impact, and changes to state law or implementation

BACKGROUND

Initiative 502 passed in November 2012 and created a comprehensive regulatory approach on marijuana with state-licensed producers, processors and retailers. Through the rulemaking process the Liquor and Cannabis Board adopted regulations on the number of retail store licenses for jurisdictions, determining a maximum of 2 for Tukwila. The state has issued licenses for both: Mount Baker Retail Partnership, LLC (12539 E Marginal way S) and Forbidden Flower (13003 Tukwila International Boulevard).

On September 3, 2013, the City Council adopted Ordinance 2407 to implement Initiative 502, which received a yes vote in all but one Tukwila precinct. In Tukwila, marijuana retailers, producers and processors are permitted uses in Tukwila Valley South and Heavy Industrial Zones, subject to the 1,000-foot exclusion rule. In 2015, 2SSB 5052 and HB 2136 allowed cities to reduce buffers from 1000 to 100 feet around all entities except elementary and secondary schools and public playgrounds. In 2017, the City Council received two separate requests to expand permitted marijuana retail zones but denied both on February 13, 2017.

DISCUSSION

The state marijuana excise tax and its distributions has changed over time and can be altered in any future legislative session. The State currently taxes marijuana through a single excise tax of 37% at the time of retail sale, in addition to the regular state and local sales tax, and \$30M of that revenue is shared with cities, towns and counties. There are two components to the distributions: 1) per capita share to all jurisdictions that allow the siting of producers, processors and retailers; 2) retail share to all jurisdictions where licensed retailers are physically located and in proportion to total statewide retail sales. Tukwila does not have any marijuana businesses and therefore does not receive sales-based revenue. Tukwila’s per capita distribution has been:

Year*	Revenues
2019 (through June)	11,513.60
2018	30,275.81
2017	4,697.34

*City Fiscal Year Jan 1 – Dec 3

It is difficult to estimate what Tukwila would receive for its retail share if the two state-issued licenses were active businesses. The formula depends not only on population but also on marijuana retail sales as a proportion of total retail sales, as well as the number/total population of cities and counties that prohibit marijuana. MRSC used to offer an estimate calculator but discontinued it due to complexity of the formula.

The chart below shows the 2018 marijuana excise revenue for neighboring cities:

City (number of locations)	Population	2018 Marijuana Excise Revenue*
Burien (2)	51,671	\$79,698
Auburn (2)	80,776	\$182,375
Des Moines (1)	31,238	\$90,725
Renton (3)	101,379	\$201,378

*State Fiscal Year: July 1 – June 30

Crime & Safety around Retail Locations

While the private recreational and medical use of marijuana is legal, police officers may arrest individuals for driving under the influence of marijuana and they may issue citations for consuming marijuana in public.

Earlier this year, Commander Harrison provided an analysis of crime reports from the other valley cities that allow retail marijuana: Auburn (2 locations), Des Moines (1 location), and Renton (3 locations). Des Moines had the highest number of calls at the business address (52 from Jan 2018 – Feb 2019). Of the 52 calls in Des Moines, only 21 were criminal in nature, while the other 31 were service-type calls (alarms, disputes, welfare checks, fire assist, solicitor, unwanted and/or suspicious subjects). The Des Moines location (23400 Pacific Highway South) would be an area that is high in foot traffic and more likely to have the types of calls generated when there are many pedestrians in the area.

From January 2017 to February 2019, the two Auburn locations had a total of 13 case reports each (.52 cases per month per location). Auburn did not provide their call types/volume. The Auburn totals were as follows: 6 thefts, 8 trespasses, 3 burglaries, 5 alarms, 1 robbery, 1 auto theft.

From January 2017 to February 2019, the three Renton locations had a total of 25 case reports (.33 cases per month per location). Most of the Renton case reports were for theft (9 cases). They also had a total of 4 burglaries and 1 robbery at these locations. Renton did not provide any call information, only case reports taken. The Renton totals are as follows: 9 thefts, 4 burglaries, 1 robbery, 2 assaults, 2 identity thefts, 2 warrant arrests, 2 recovery OSA stolen vehicles, 1 harassment, 1 vehicular assault, 1 suspicious person/situation.

A Liquor and Cannabis Board agent provided some additional information. Between January 2017 and February 2019, of the 9 retail locations, there were 9 robberies. Six of the locations were robbed, 3 were robbed twice. All the robberies involved the use of a firearm. During one of the robberies, an employee was shot, during another, an employee was “pistol-whipped.” One of the businesses was also the victim of an attempted burglary that involved the burglar shooting at the door locks in an unsuccessful attempt to gain entry. It should be noted that the Liquor and Cannabis Board only has information on felony crimes that occurred inside of the business; they don’t track the misdemeanors or anything that happened outside in the parking lot or surrounding areas.

RECOMMENDATION

Staff is seeking Committee direction on next steps. If a majority of the City Council wishes to expand the zoning for retail marijuana, it would require ordinance development and a public outreach and hearing process that would need to be factored into the 2020 work plan.

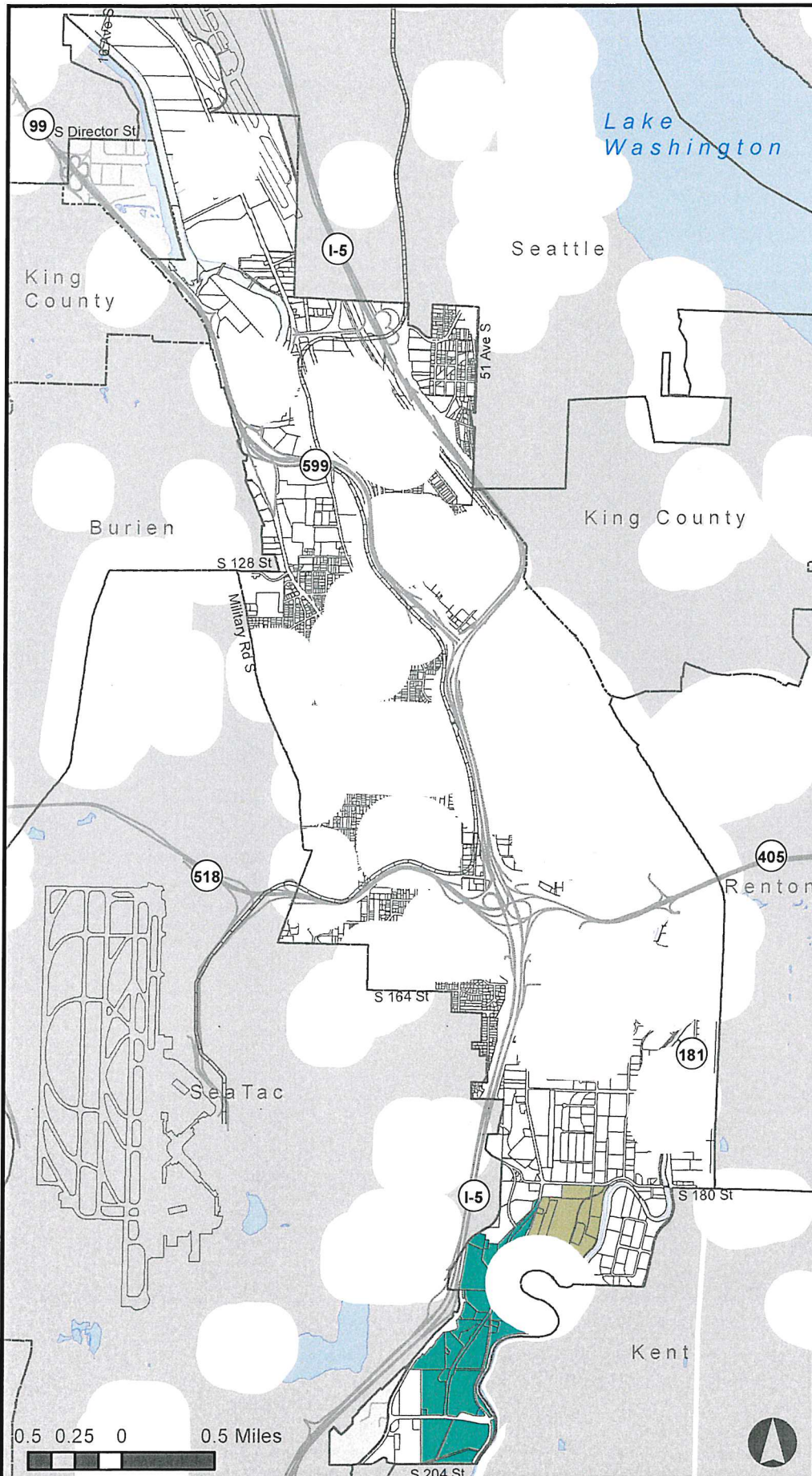
ATTACHMENTS

Map

Marijuana Excise Tax Excerpt from Revenue Guide for Washington Cities & Towns



**Zoning Districts
where Marijuana
Businesses are
Allowed
(with WA State Liquor
Control Board buffer
areas shown)**



Legend

- HI Heavy Industrial
- TVS Tukwila Valley South

White Areas = Locations restricted by
WSLCB and zones where marijuana
businesses are not permitted

Marijuana Excise Tax

Quick Summary

- A portion of the state's marijuana excise tax is distributed to cities and counties depending on their marijuana policies.
- Two separate components:
 - **Per capita share** distributed to all cities and counties that do not prohibit marijuana businesses.
 - **Retail share** distributed to cities and counties where marijuana retailers are located, in proportion to statewide marijuana revenues.
- No clear guidance on use of revenues, but stated intent of I-502 is that marijuana legalization will “[allow] law enforcement resources to be focused on violent and property crimes [and generate] new state and local tax revenue for education, health care, research, and substance abuse prevention.”

RCW: [69.50.540\(2\)\(g\)](#)

Initiative 502 (I-502), which was approved by voters in 2012, legalized recreational marijuana and authorized marijuana excise taxes. Marijuana excise taxes are imposed and collected by the State of Washington; as of 2018, the state imposes a 37% marijuana excise tax on the retail sale of marijuana, marijuana concentrates, and marijuana-infused products ([RCW 69.50.535](#) and [WAC 314-55-089](#)).

Cities and counties may *not* impose additional local excise taxes upon the sale of marijuana. However, the state shares some of the excise tax revenues with cities and counties, as mandated by I-502.⁶⁰ The actual revenues received by cities depend on legislative appropriations from the state budget. The state legislature has previously attempted to reduce local marijuana excise tax distributions, and like all shared revenues these distributions could be changed in future legislative sessions.

Marijuana excise tax distributions depend in significant part upon local marijuana policies and regulations. The regulatory approach that each city adopts, as well as the number of local marijuana retailers, will determine whether the city receives any marijuana excise tax revenue (and how much).

Eligibility and Distribution Formula

There are two separate components to marijuana excise tax distributions:

- **Per capita share:** Distributed on a strictly per capita (population) basis to all cities, towns, and counties that allow the siting of marijuana producers, processors, AND retailers. Any jurisdiction that prohibits marijuana producers, processors, OR retailers is not eligible.
- **Retail share:** Distributed to all cities, towns, and counties where licensed marijuana retailers are physically located, and in proportional share to total statewide marijuana retail sales.

⁶⁰ The intent of I-502 states, among other things, that it will “[generate] new state *and local* tax revenue” [emphasis added], although it does not specify how the revenue will be shared with local governments or how much will be shared.

The different distribution formulas mean that some jurisdictions will receive both the per capita and retail distributions, while others may receive only one or the other, and some jurisdictions will receive neither. The chart below shows a few hypothetical scenarios to illustrate the differences.

Hypothetical Marijuana Excise Tax Distribution Scenarios	Eligible for per capita share?	Eligible for retail share?
City allows marijuana production, processing, and retail and has at least one retailer located within the jurisdiction.	Yes	Yes
City prohibits marijuana entirely and has no retailers located within the jurisdiction.	No	No
Town took no action to prohibit marijuana, but is small enough that no marijuana businesses can locate there under state law due to the buffer requirements.	Yes	No
City prohibits marijuana producers and processors but allows retailers and has at least one retailer located within the jurisdiction.	No	Yes
City currently prohibits new marijuana businesses but has existing retailers that are grandfathered in.	No	Yes
City prohibits marijuana retail and has no retailers but allows marijuana production and processing.	No	No

Each year by September 15, the LCB must provide the state treasurer with the annual distribution amount for each county and city. For the most recent legislative appropriations and distribution estimates, refer to our annual [Budget Suggestions publication](#), released every year at the end of July.

Use of Revenues

The restrictions on the use of marijuana excise tax revenues are somewhat murky, as there is no clear statute stating how the funds must be used. However, the notes in [RCW 69.50.540](#) reference [RCW 69.50.101](#) and the stated intent of I-502, which states that marijuana legalization will “[allow] law enforcement resources to be focused on violent and property crimes [and generate] new state and local tax revenue for education, health care, research, and substance abuse prevention.”

Timing of Receipts

Payments are distributed quarterly on the last business day of March, June, September, and December. The State Treasurer’s Office distributes both the “per capita” and “retail” shares together in one payment using the same BARS code.