

City of Poulsbo

Planning & Economic Development



CANNABIS RETAIL ZONING CODE AMENDMENTS STAFF REPORT AND RECOMMENDATION

To: Mayor Erickson and City Council
From: Heather Wright, AICP, Planning and Economic Development Director
Subject: Cannabis Retail Zoning Code Amendments
Date: February 14, 2024

Staff respectfully recommends approval of the Cannabis Retail Zoning Code Amendments as set forth in Exhibit A and Ordinance No. 2024 -01.

PROPOSED MOTION:

MOVE to recommend (approval) (approval with modifications) of the Cannabis Retail Zoning Code Amendments of Ordinance No. 2024-01, and as identified in Exhibit A.

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1.0 General Information

Applicant: City of Poulsbo | 200 NE Moe Street | Poulsbo WA, 98370

Application No.: P-11-16-23-01

Description of Proposal:

Allow cannabis retail in the C-2 Viking Avenue and C-3 SR 305 zoning districts (south of SR305/307 intersection) with a limit of two (2) retailers total, one (1) per zoning district with 1,000 foot buffer to elementary or secondary schools and playgrounds and 100’ buffer of recreation center or facility, child care center, public park, public transit center, library or any game arcade where admission is not restricted to persons age 21 or older.

Type of Amendment: Zoning Code Text Amendments

SEPA Status: A DNS was issued on November 28, 2023

Enabling Code: PMC 18.210.010, PMC 19.40.050

Planning Commission Hearing: December 12, 2023

City Council Hearing: February 14, 2024

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2.0 Background

- I-502 passed in 2012 with 52% of Poulsbo residents approving the legalization of recreational marijuana.
- City of Poulsbo passed interim regulations to allow marijuana –related uses (retailers, producers, processors and medical marijuana collective gardens) in 2013 in Light Industrial zoning district.
- Planning Commission recommended approval of allowing recreational marijuana uses and collective gardens within Light Industrial zoning district, May 2014.
- City Council prohibited production, processing and retailing of marijuana, June 2014.

- On April 5, 2023, as part of the city budget discussion and following an initial discussion in March, the City Council decided they wanted to allow cannabis retail in the City of Poulsbo and they requested that the Planning Commission make a recommendation on options as to where retail sales could be located with an acknowledgement that 1,000 foot buffer would be very restrictive.
- The Planning Commission had their first discussion on April 11, 2023 and requested staff return with information on what has been successful in other jurisdictions and the requirements of the RCW. There was also a request to speak from someone at the Washington State Liquor and Cannabis Control Board (WSLCB) and a cannabis business owner.
- Planning Commission held their first discussion with four (4) representatives from the Washington State Liquor and Cannabis Board (WSLCB), a cannabis business owner and staff on November 28, 2023 (Exhibit B).
- Planning Commission held a duly noticed public hearing on December 19, 2023. After close of public hearing and receiving no public comments at the hearing, the planning commission voted to recommend approval to the Poulsbo City Council and adopted findings of fact in support of their decision.
- City Council held a study session with two (2) representatives from the WSLCB, a cannabis business owner, the Poulsbo police chief on planning staff on January 7, 2024.
- City Council held a second study session to analyze the impact of buffers on child care centers on January 14, 2024.

3.0 Noticing

On November 28, 2023, the Notice of Application (NOA) with Optional DNS and Notice of Planning Commission Public Hearing were published in the Seattle Times, emailed to the NOA, SEPA, Public Hearing, and Development Regulations e-notice list, and posted at the Poulsbo Post Office, City Hall and the City's website (Exhibit C).

The Cannabis Zoning Code Amendments were publicly released December 5, 2023. This release and all associated documents were posted on the City's website, distributed to Washington State Department of Commerce, and local, regional and state agencies.

On January 25, 2024, the Notice of City Council hearing was published Seattle Times, emailed to the NOA, SEPA, Public Hearing, and Development Regulations e-notice list, and posted at the Poulsbo Post Office, City Hall and the City's website (Exhibit D).

4.0 City Council

City Council held a study session with representatives from the WSLCB on January 9, 2024. The Council had questions about the use that primarily centered around security and crime. Answers to the questions about the risk were provided by the WSLCB as well as a cannabis store owner. Comments were received by the Poulsbo police chief. Council also received a comment from Kitsap Transit requesting the buffer not be reduced from a transit center. Council raised a concern about buffers from child care centers.

Following discussion, the Council requested staff return with various depictions of buffers from child care centers for their consideration. Council reviewed the buffers on their January

17, 2024 meeting and received information on buffers imposed from child care centers in four different states and from neighboring jurisdictions. Following review of the maps and discussion, the Council decided to impose the minimum buffer of 100'. City Council also made a motion to forward this item to a public hearing on January 17, 2023 and requested staff identify the impact, if any, of mixed use on cannabis retail.

Staff confirmed with the WSLCB that there is not a buffer to residential use and that by promoting and encouraging mixed use in the SR-305 corridor, cannabis retail would not be precluded.

5.0 Planning Commission Discussion and Request for Information

The planning department utilized the services of Municipal Research Service Commission (MRSC) to pose seven (7) questions to various jurisdictions to respond to the Planning Commission inquiry. The survey was launched in June 2023 and 11 jurisdictions across the state responded, including both cities that do and do not allow cannabis retail sales. The results were provided to the planning commission at their November 28, 2023 meeting.

Further, the planning commission's request for state law considerations were provided and included the following excerpts and code references, as well as a discussion on security requirements:

a) Location and Buffers:

Except as provided in (b) through (e) of this subsection, the board may not issue a license for any premises within 1,000 feet of the perimeter of the grounds of any 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 21 years or older.

A city, county, or town may permit the licensing of premises within 1,000 feet but not less than 100 feet of the facilities described in (a) of this subsection, except elementary schools, secondary schools, and playgrounds, by enacting an ordinance authorizing such distance reduction, provided that such distance reduction will not negatively impact the jurisdiction's civil regulatory enforcement, criminal law enforcement interests, public safety, or public health.

b) Advertising, Signage:

Except for the use of billboards as authorized under RCW [69.50.369](#) and as provided in this section, licensed cannabis retailers may not display any outdoor signage other than two separate signs identifying the retail outlet by the licensee's business name or trade name, stating the location of the business, and identifying the nature of the business. Both signs must be affixed to a building or permanent structure and each sign is limited to 1,600 square inches.

- (i) All text on outdoor signs, including billboards, is limited to text that identifies the retail outlet by the licensee's business or trade name, states the location of the business, and identifies the type or nature of the business.
- (ii) No outdoor advertising signs, including billboards, may contain depictions of cannabis plants or cannabis products. Logos or artwork

that do not contain depictions of cannabis plants or cannabis products as defined in this section are permissible.

- (A) A depiction of a cannabis plant means an image or visual representation of a cannabis leaf, plant, or the likeness thereof that explicitly suggests or represents a cannabis leaf or plant.
- (B) A depiction of a cannabis product means an image or visual representation of useable cannabis, cannabis-infused products, or cannabis concentrates, or an image that indicates the presence of a product, such as smoke, etc.
 - (iii) Stating the location of the business may include information such as the physical address or location, directional information, website address, email address, or phone number of the licensed business.
 - (iv) Identifying the nature of the business may include information related to the operation of the business, what the business is engaged in, or the goods the business offers for sale.
 - (v) Double-sided signs or signs with text visible on opposite sides are permissible and count as a single sign so long as the sign is contained in or affixed to a single structure.

No cannabis licensee may use or employ a commercial mascot outside of, and in proximity to, a licensed cannabis business. (WAC 314-55-155)

c) Hours of Operation:

A cannabis retailer licensee may sell usable cannabis, cannabis concentrates, cannabis-infused products, and cannabis paraphernalia between the hours of 8 a.m. and 12 a.m (WAC 314-55-147).

d) Security Requirements

Security requirements for cannabis licensees are verified by the state and include a requirement for an identification badge, installation of alarm and surveillance systems. Furthermore, traceability requirements demand that cannabis licensees track cannabis from seed to sale (WAC 314-55-83)

In line with the security requirement, the planning commission was briefed on the City Council's request on the potential impact retail sales could have on crime from Poulsbo Police Chief, Ron Harding, had reached out to the neighboring jurisdictions and was informed that the impact was not measurable. They encouraged the Chief to work closely with the owners before establishing their shops for security protocol and cooperation.

These regulations provide parameters for the location, advertising, signage, and operating hours of cannabis retail establishments, aiming to balance commercial interests with considerations for public safety and health. These regulations are proposed to be cross referenced under the use specific standards for cannabis retail (proposed PMC 18.80.080.O).

6.0 Staff and Planning Commission Recommendations

Following an analysis of the buffer requirements (see Exhibit E) and the existing development patterns, staff recommended that the planning commission allowing cannabis retail in the C-2 zoning district by reducing the buffer to 100' along Viking Avenue (for those uses that allow a buffer

reduction). Staff also recommended that as part of the SR305 moratorium, the commission and council consider also allowing it in the C-3 zoning district.

Staff did not recommend the C-4 College Marketplace zoning district due to understood limitations on cannabis retail use based on a private easement with covenants and restrictions between Wal Mart and Home Depot and properties within 400' of their property boundaries. Staff also did not support the C-1, Downtown/Front Street zoning district due to feedback and concerns voiced in previous discussions about a potential change to the existing character. Finally, staff no longer supported allowing the use in the Light Industrial (LI) district due to the limited amount of available land. Since the original allowance in the LI district in 2014, the city's public works department, Kitsap Transit, and the AM/PM gas station have been built, expanded and/or relocated in this district and there are very limited locations for this potential use.

Staff supports C-2 and C-3 zoning districts due to its compatibility with the purpose of the zoning district and existing development patterns and character, as further described below:

1. **Compatibility with the purpose of the C-2 zoning district.** Every zoning district has a purpose that it is intended to accomplish. For C-2, the purpose is to 1) encourage commercial uses and activities that depend upon safe and efficient access to major transportation routes, 2) provide a compatible mix of office, commercial and residential use, 3) allow for residential and mixed-use projects to increase the opportunities for people to live, work, shop and recreate within walking distance and 4) ensure that projects are designed using consistent and compatible architectural design.

Cannabis retail aligns with the specified purposes of the C-2 zoning district for several reasons. Firstly, it encourages commercial uses that depend on safe and efficient access to major transportation routes, as cannabis retail can benefit from strategic locations with convenient access for customers and suppliers. Secondly, the inclusion of cannabis retail contributes to a compatible mix of office, commercial, and residential uses, fostering a diversified and balanced urban environment.

Thirdly, allowing cannabis retail supports the goal of increasing opportunities for people to live, work, shop, and recreate within walking distance. This is particularly relevant as the northern end of Viking is primarily residential and connects by sidewalks to the southern commercial area, promoting a more comprehensive and accessible community. Lastly, any newly proposed buildings to contain cannabis retail establishments shall adhere to design guidelines.

As for C-3 SR 305 zoning district, it is intended to 1) encourage businesses that offer the frequently needed consumer goods and services for the local population, 2) support a wide range of activities to enhance the SR 305 corridor as the business and financial, health services, and professional office hub of the community and 3) ensure that projects are designed using consistent and compatible architectural design.

Cannabis retail aligns with the specified purposes of the C-3 zoning district for several reasons. Firstly, there is currently not an opportunity for the Poulsbo population to purchase cannabis for medicinal or recreational use within city limits along the SR 305 corridor. However, we can assume a demand for such services because there is currently a retail cannabis located along the SR305 corridor within Kitsap County south of Poulsbo in Suquamish and approximately 4 miles from the southernmost terminus of the C-3 zoning

district. Secondly, the inclusion of cannabis retail can complement businesses in the area and can be seen as part of the overall economic development by providing jobs and contributing to the revenue to support the financial health of our community.

Like along Viking Way, any newly proposed buildings to contain cannabis retail establishments shall adhere to design guidelines.

2. **Existing development patterns and character.** Viking Way is undergoing a revitalization, marked by renewed development that encompasses the revival of former establishments and the occupation of previously vacant buildings. The area provides a diverse array of retail choices, featuring a mix of eclectic options such as a nursery, breweries, RV sales, hair salon and drive through coffee to name a few. Additionally, there are vacant lots and storefronts situated beyond the 100-foot buffer zone.

SR305 is a major transportation artery, facilitating the movement of commuters, residents and visitors between Poulsbo and other areas of the county and beyond. It provides a mix of land uses, predominantly commercial in nature. The corridor provides more properties for retail than Viking in comparison by having a larger area outside of buffers.

Following Planning Commissions discussion with staff, four members from the Washington State Liquor and Cannabis Control Board and a cannabis business owner, the Planning Commission concluded that they were interested in 1) reducing the buffer to 100' for the uses in which the buffer is allowed by state law to be reduced (recreation center or facility, child care center, public park, public transit center, library, and any game arcade where admission is not restricted to persons age 21 or older) and 2) allowing cannabis retail in both the C-2 and C-3 zoning districts with 3) a limitation on one retailer per zoning district for a 4) maximum total of two (2). The proposed text amendment reflects this expressed preference (Exhibit A).

7.0 **Attorney General's Unconstitutional Takings Memo**

Pursuant to Comprehensive Plan Policy PI-2.4, City staff members are familiar with Washington State Attorney General's "warning signals" for unconstitutional takings of private property. Staff has reviewed the Attorney General's Advisory Memorandum: Avoiding Unconstitutional Takings in the context of the proposed amendment and has consulted with the City Attorney regarding the warning signals. Staff and the City Attorney are comfortable that the draft ordinance does not result in any unconstitutional taking.

8.0 **Review Criteria and Staff Conclusion and Recommendation**

Amendments to the text of this title or zoning amendments to the city's zoning map shall be applied for and processed according to the provisions of Title 19.

In order to grant a zoning code text amendment, the following findings must be made:

1. The amendment is consistent with the comprehensive plan; and
2. The amendment supports and/or enhances the public health, safety or welfare; and
3. The amendment is not contrary to the best interest of the citizens and property owners.

Conclusion: Staff finds that the proposed amendment is supported by the Comprehensive Plan and can further Policy ED-3.2, "review land use regulations and development standards to ensure that vacant or underutilized employment lands can be used as efficiently as

possible. Identify and remove barriers to redevelop underutilized and/or vacant land and buildings”. The locations identified for the proposed use are primarily developed, featuring vacant buildings that could be repurposed.

The proposed regulations uphold state law, which provide parameters for the location, advertising, signage, and operating hours of cannabis retail establishments, aiming to balance commercial interests with considerations for public safety and health. These regulations are proposed to be cross referenced under the use specific standards for cannabis retail (proposed PMC 18.80.080.O).

Finally, the city councils request to allow cannabis retail stems from their budget deliberations during both the spring and fall of 2023, recognizing the potential for an additional revenue stream. If the city opts not to permit cannabis retail, it forfeits eligibility for a per capita distribution of the state-mandated 37% excise tax (RCW 69.50.535 & 540). Conversely, by endorsing this use, revenue distribution will be allocated on a per capita basis, with the remainder distributed according to actual cannabis retail sales. The generated funds can be earmarked for essential areas such as law enforcement, education, and healthcare. Top of Form

For these reasons, staff finds that the proposed amendments are consistent with the Comprehensive Plan, support and/or enhances the public health, safety, or welfare, and is not contrary to the best interest of the citizens and property owners of the City of Poulsbo.

Recommendation: The Planning Commission and the Planning and Economic Development staff respectfully recommends the City Council approve the proposed Cannabis Zoning Code Amendments as set forth in exhibit A of this staff report.

9.0 City Council Public Hearing, February 14, 2024

The City Council Public Hearing is scheduled for **Wednesday, February 14, 2024, at 5:00 pm**, or soon thereafter. Public hearings are being held as a hybrid virtual/in-person meeting at the web address and call-in number noted below and at Poulsbo City Hall Council Chambers, 200 NE Moe Street, Poulsbo, Washington. This call-in number: 1-253-215-8782 and meeting id: 898 4841 6447 are provided for virtual attendance, in addition to this webinar link: <https://us02web.zoom.us/j/89848416447>. Oral comments can be made in-person, and not virtually. Please state your name and limit your comments to 3 minutes unless additional time is granted by the Council. As a rule, the Council will not respond to citizen comments. Written comments can be emailed to cityclerks@cityofpoulsbo.com by 2:00 p.m. the day of the meeting, and they will be distributed to the Council before the meeting. Written comments will not be read into the record.

PROPOSED MOTION:

MOVE to (approve) (approve with modifications) Application No. P-11-16-23-01 and Ordinance No. 2024-01, the Cannabis Retail Zoning Code Amendments, as identified in Exhibit A to this staff report.

10.0 Exhibits

- A. Draft Cannabis Zoning Code Amendments and Ordinance No. 2024-01
- B. Notice of Application with Optional DNS and Notice of Planning Commission Public Hearing
- C. Planning Commission Findings of Fact Recommendation
- D. Notice of City Council Public Hearing