


## WEST RICHLAND AGENDA ACTION ITEMS

<b>AGENDA ITEM:</b>	<b>8i</b>	<b>TYPE OF ACTION:</b>			
<b>MEETING DATE:</b>	November 21, 2023	<b>Execute Contract</b>		<b>Consent Agenda</b>	
<b>SUBJECT:</b>	ORD 26-23 Text Amendment to allow Recreational Marijuana Retail Sales in the Light Industrial zone	<b>Pass Resolution</b>		<b>Public Hearing</b>	
		<b>Pass Ordinance</b>	X	<b>1st Discussion</b>	
<b>STRATEGIC FOCUS AREA</b>	1. Community Economic Vitality, Competitiveness, & Diversity Goal 4: Create development policy codes appropriate to achieve city vision relative to commercial and residential development.	<b>Pass Motion</b>		<b>2nd Discussion</b>	X
<b>Prepared by:</b>	Eric Mendenhall, Community & Economic Development Director			<b>Other</b>	
<b>Reviewed by:</b>	Brent Gerry, Mayor & CEO 				

**SUGGESTED MOTION:** I move to approve Ordinance 26-23, adopting the proposed text amendment that allows cannabis retail sales in the Light Industrial district with associated development regulations.

**ATTACHMENTS:**

- Draft Ordinance

**BACKGROUND INFORMATION:**

Staff received an application from K&B Weaver LLC to allow Cannabis sales in the Commercial General (CG), Commercial Light Industrial (CLI) and Light Industrial (LI) zoning districts. The proposed amendment retains the prohibition on production and processing of cannabis in all zones.

Staff included the potential for cannabis sales in the recent citywide survey that was conducted from May-June. Out of approximately 6,159 households the city received 662 citizen responses: 32% stated they strongly support, 16% somewhat support, 18% neutral, 8% somewhat oppose, 26% strongly oppose. Given this information staff proceeded with the proposed text amendment for discussion with the Planning Commission on July 17, 2023.

The Planning Commission asked for 911 calls to the existing Nirvana shop on Arena Road, annexation possibility and risks associated with annexing the shop on Arena Road, ability to restrict hours of operation, and approximate anticipated tax revenue. The information provided to the Planning Commission is listed below and includes calls from July 2022 – July 2023.

- 911 Calls: the total 911 cases reported to Benton County Sheriffs office are 22. For comparison staff pulled 911 calls to the West Richland Police Department for a grocery store (140) and a convenience store (114).
- Annexation: Council could take action and annex the existing cannabis store into the city limits as it is in the City's Urban Growth Area. However, the City Attorney has advised not to do so at this time do to potential litigation. The state limits the number of licenses issued per jurisdiction and annexing Nirvana into the city could put the existing license in jeopardy.
- Restricted Hours: Council could restrict the hours of operation. State law currently restricts hours of operation from 8:00AM-12:00AM.
- Approximate Anticipated Revenue: Using similar sized cities in Washington State and their current allocation State Shared Revenue would likely be close to \$60,000/year. Estimated sales tax based on data provided by the applicant is \$67,000-\$101,000/year. (totaling \$127,000-\$161,000/year)

The marijuana shop on Kennedy/Arena Road is located in the City's urban growth boundary, but is regulated by the

County. The applicant of the text amendment holds the license from the state for sales in West Richland.

The Planning Commission requested data on potential sales tax revenue. Using data provided by the applicant the finance department provided the following approximate conservative revenue information:

- State shared revenue: \$60,000/year
- Estimated Sales Tax: \$67,000-\$101,000/year
- **Totaling: \$127,000-\$161,000/year**

Staff has reviewed the applicant's proposed text amendment which includes allowing the use in the CG, CLI and LI zoning districts. Staff recommends not to allow it in CG or CLI zoning districts. If the use is allowed, staff recommends allowing it in the LI zone.

A SEPA Determination of Non-significance was issued on July 24, 2023 and no appeals were filed.

The Department of Commerce was notified and granted expedited review on August 7, 2023. No additional comments or feedback was provided by the Department of Commerce.

The Planning Commission held a duly noticed Public Hearing on August 10, 2023 and recommended 3:1 Council approve the proposed text amendment at their September 14, 2023 regular meeting.

Public comments have been encouraged and received both verbally at the Planning Commission hearing on August 10<sup>th</sup> as well as emailed to city staff. A majority of the comments have been in opposition and align with demographic data collected in the survey.

The City Council held a duly advertised public hearing on November 7, 2023 and heard public comments.

For a copy of the public record, please reference the November 7<sup>th</sup> meeting packet and provided public comments. If a copy of the public record is desired, please reach out to myself or the City Clerk.

**SUMMARY:**

The proposed text amendment would allow the sales of recreational marijuana in the Light Industrial zone as a permitted use, establish performance standards similar to those found in the recently adopted Pasco regulations and would be in compliance with state regulations and requirements. The proposed amendment also retains the prohibition on production and processing of cannabis in all zones.

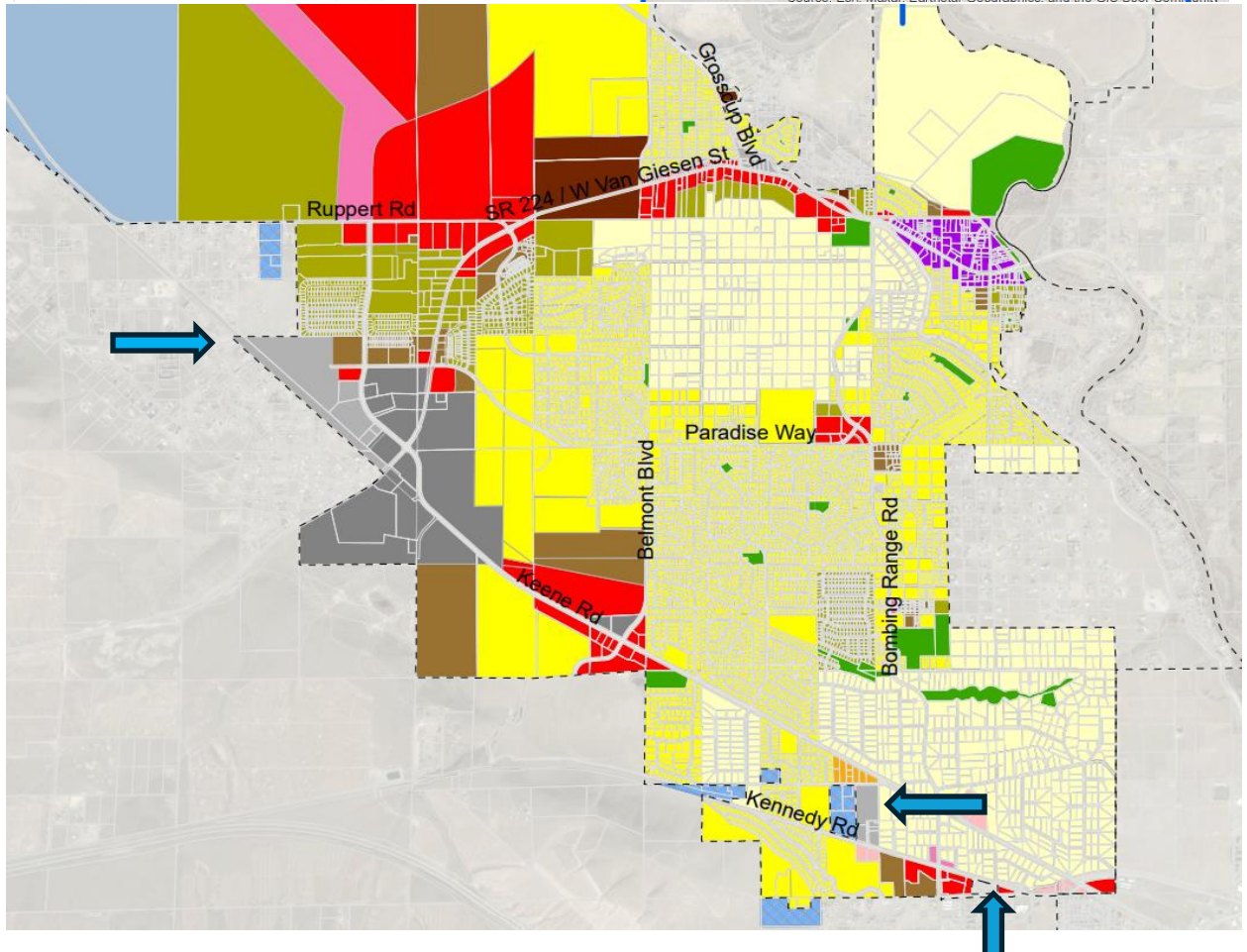
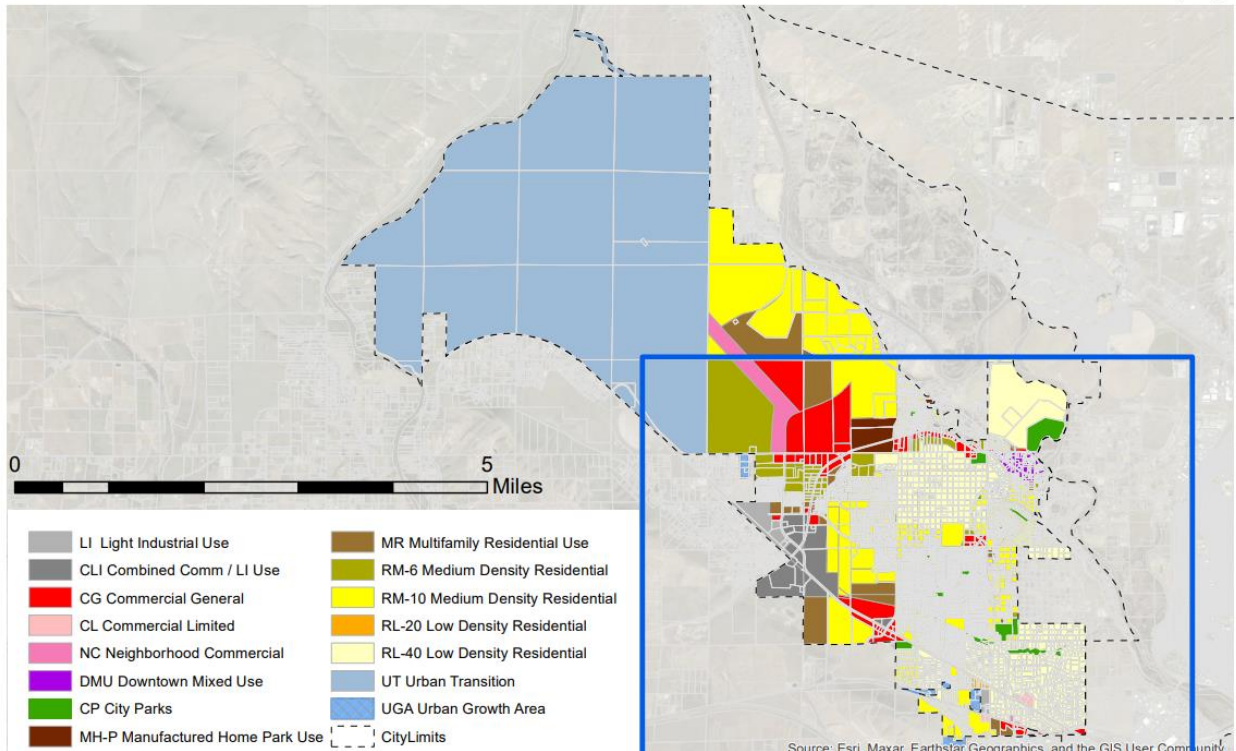
**RECOMMENDATION:**

Planning Commission has recommended Council approved the proposed text amendment.



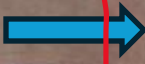
# CITY OF WEST RICHLAND OFFICIAL ZONING MAP

Adopted 2/20/2024 (ORD 0324)





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Layers

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## **We are strongly opposed to this proposal for the following reasons.**

- **Zoning**
  - There are two light industrial areas that would be eligible for this activity
    - The light industrial area on the western boundary is abutted by Medium Density Residential and Multifamily Residential along the north-eastern section. Not a great location for the family housing that would eventually be there
    - The light industrial area along Kennedy between Watkins Way and Bombing Range is almost entirely surrounded by Low Density Residential.
  - Although staff is trying to tell people this location is already built out and won't be an issue, this is false. Once it's allowed in a zone, it's allowed and current & future property owners can do whatever is allowed in that zone. Any of the parcels in that zone could sell tomorrow and the new owner could setup a shop there. Nirvana is a perfect example of this exact issue.
  - Staff keeps saying there is only 1 shop that would be allowed, but that does not appear to take into consideration the additional "social equity" licenses the State has allowed. It is our understanding based on information on the LCB website that "all licenses available for social equity retail licenses are not bound by county and can be used statewide in any county contingent on local jurisdiction approval". Opening up the zoning would also allow any of these types of licenses to eventually open shops here as well. Since the state has continued to make changes to these rules, even if something isn't allowed now, you can bet they will change that if areas start removing their moratoriums.
- **Community Survey**
  - Staff repeatedly points to a recent community survey stating the community would support such a change. There were only 662 responses to that survey and it's highly questionable how notice was given to citizens that a survey was even being conducted. I know we did not receive an email invite.
  - According to the State OFM, the 2023 population for West Richland is 17,840. Out of the 662 survey responses, 32% strongly supported allowing such sales. That's 211 people out of 17,840. There were also 26% (172 people) who strongly opposed. But staff would have us believe that because 1.18% of the population strongly supports it, that the rest of the community would as well. The survey results even stated in the Key Takeaways that "feelings are divided. Although some strongly support it, nearly as many oppose it."
  - The question on the survey was also misleading "Allowing cannabis sales in the city would create dedicated city revenue to support police services and park operation & maintenance. What's your opinion about allowing cannabis sales in West Richland?"
    - This suggests that a substantial amount of money would be received, which is not the case. The small amount of revenue would be more than offset by increases in public safety costs.
      - This revenue source must be dedicated to public safety related expenditures not parks.
  - IF we are to believe the survey, it also stated:
    - Citizens love that West Richland feels safe, secure & peaceful. They like the small town feel.

- Citizens rated the following as high priorities for the Council to focus on:
  - Managed growth & density of the City
  - Fair cost of living
  - Attract new restaurant business.

***Nowhere in the survey or the Growth Management Plan does it mention that pot shops are a priority that staff time should be dedicated to.***

- There is a long list of priorities indicated in both "Key Findings" and the "Anything More to Say" sections, none of which say spend tons of staff time, costing the taxpayers money, to bring more pot business here.
- **Transparency & Public Involvement**
  - Mayor stated at the Aug 8, 2023 Special Meeting, that this process would be very transparent with ample opportunity to participate. However, the actions of staff do not support that. They are doing the minimum required by state law.
    - At the July 13<sup>th</sup> Planning Commission meeting, this item was discussed and packet materials noted an estimated date of August 10<sup>th</sup> for the public hearing.
      - There was no information on the website regarding what was actually discussed at that meeting. No video and the minutes, which were not available until Aug 10<sup>th</sup>, merely said there was discussion. They have the ability to record these meetings as the Council meetings are recorded, so they are choosing not to.
  - When staff was asked about a recording, they told us to fill out a public records request to get a copy of the zoom recording. If they have such a recording, why is it not available on the website?
    - Staff could have posted the planned Aug 10<sup>th</sup> public hearing meeting early and announced it in multiple communication channels, including but not limited to, utility bill inserts, media releases, social media, etc. but they did not. They chose to wait until Aug 1<sup>st</sup> to post the hearing and only posted to the website. Again, only the minimum required by law.
    - This timing did not meet the 10-day posting timeline as required by RCW 1.12.040.
    - Statute clearly states you cannot count the day of the posting as day-1 so they only provided 9-days notice.
    - The deadline for submission of written comments was posted as 4pm Aug 2<sup>nd</sup> in order to be included in the packet so the Commissioners could actually read/study them prior to the meeting. **1-day's notice!**
    - The hearing was ultimately moved to Aug 17<sup>th</sup> because some of the Commissioners were not available, although the submission deadlines to submit written testimony were not also extended.
    - Packet included "draft" ordinance which included language that the amendment had already been unanimously approved by the Planning Commission. These types of errors/oversights do not demonstrate transparency.
  - At the Aug 17<sup>th</sup> public hearing, after hearing those that spoke, the public hearing was closed and one of the Commissioners asked for staff to conduct additional research and to come back to the next meeting (Sept 14<sup>th</sup>) with that additional information..
    - Because the public hearing was closed, the public was not allowed to add comments to the record on the new information staff will be entering into the record.

- Text Amendments are a legislative issue which state law allows an agency to conduct as many public hearings as it would like.
  - A written request was made to both the PC and City Council that an additional public hearing be conducted at the Sept 14<sup>th</sup> meeting in order to allow the public to comment on the newly introduced information. Zero responses were given to this request.
  - Three residents submitted written comments to be included in the Visitors section of the Sept. 14<sup>th</sup> Planning Commission meeting as they were unable to attend. The minutes do not reflect any mention of these comments and, again, since they refuse to post the recordings of these meetings, it's unclear if these comments were even read at the meeting. Citizens are permitted to provide whatever information they wish during the Visitor Comment portion of the agenda. The minutes should reflect those comments. While these comments wouldn't be included in the official testimony records from the public hearing, they should absolutely have been in the minutes from the 9/14 meeting.
  - There were only 3 Commissioners, of what should be a 7-member Planning Commission, who voted to approve this action. While it technically passed, it's still indicative of a small group pushing something that the majority of the community doesn't support.
  - As a side note, it would be nice if the website accurately reflected who is on your Planning Commission so the public can be informed. It would appear from attendance listed on the minutes that Jared Retter was added at some point. Presumably, he took either Mary Bohling or Jerry Surdyk's position as their names don't seem to appear in minutes. But we can't tell which position is vacant and which was filled with Mr. Retter.
  - Very few people typically attend Planning Commission or City Council meetings, regardless of the jurisdiction. When you do get people participating & filling your chambers, you need to start listening. Every time this issue has come up, you have received strong opposition to it. This time is no different with only 2 of the people at the Planning Commission hearing speaking in support. One of them was the applicant and the other stated they hold a social equity license, so they both have a financial interest in this. The applicant is not a resident here (I don't recall if the other was), but you need to be listening to the overwhelming opposition from residents.
  - West Richland has a reputation for not listening to their citizens – there were even comments to that effect in the survey – you have an opportunity to change that by listening and voting NO.
- **Crime**
    - In discussions we have had with public safety leadership in our neighboring jurisdictions, cannabis has absolutely had a negative impact on our communities, and is a major contributor to the drug problems and skyrocketing crime rates. It is absolutely a gateway drug.
  - **Money**
    - Excise Taxes: The staff report provided to the Planning Commission indicates Prosser received \$22,782 in Excise Tax for FY22. However, the distribution reports from the Washington State Liquor & Cannabis Board (LCB) show that Prosser received \$20,713 in FY22 and \$23,297 in FY23. Ferndale was listed at \$51,557 for FY22 but the distribution reports from LCB show that Ferndale received \$37,556 in FY22 and



\$42,112 in FY23. These are the official numbers published by the state, so where is staff getting their data? If the numbers provided by staff don't match the official numbers from the state, how do you expect citizens to trust their analysis?

- Check it out for yourself:
- <https://lcb.wa.gov/records/frequently-requested-lists>
- <https://lcb.wa.gov/sites/default/files/publications/Cannabis/FY16-FY22-Distributions.xlsx>

○ Distributions are based on a number of factors including location of the store and population. Prosser received a very small percentage of the over \$14M in Excise Taxes collected in Benton County for FY22. Only \$416,425 of that \$14M was returned to local jurisdictions – the rest was retained by the state!

○ Sales Taxes:

- Cities receive a fraction of the retail sales taxes collected. Typically about 0.85% of the 8.7% goes to the city plus a portion of the public safety components. Most (6.5%) goes to the State;

State	0.065
Transit	0.006
County	0.0035
Criminal Justice	0.001
Public Safety	0.003
City	0.0085

- It's unlikely that adding another location so close to Nirvana is going to double sales in the area. The more likely scenario is there may be some increase, but most will be a redistribution from Nirvana sales to another store. That should be considered as a factor when estimating any potential revenue.
- Regardless of the jurisdiction, the one thing that's very clear when looking at financial data is that the only ones making money are the shop owner and the state. The cities receive minimal amounts that do not even begin to cover the increased costs from public safety and health/safety perspective.

- **Nirvana Location**

- Property is an eye sore with debris, weeds, broken fencing surrounding the property. They clearly have no interest in the community.
- Property is receiving City water. They are only being charged a 50% surcharge. Most jurisdictions are double that amount and the property owner is required to sign an Outside Utility Agreement supporting any future annexation in exchange for the connection. State law does not require cities to extend utilities outside their boundaries. Why is our Council not protecting the city's interest by charging a higher rate to non-residents and requiring OUA's?