

No. 94083-5

SUPREME COURT OF THE STATE OF WASHINGTON

MMH, LLC and GRAYBEARD HOLDINGS, LLC,

Appellants,

and

DOWNTOWN CANNABIS CO., LLC; MONKEY GRASS
FARMS, LLC; AND JAR MGMT, LLC, d/b/a/ RANIER ON PINE,

Intervenor-Appellants,

v.

CITY OF FIFE,

Respondent,

and

ROBERT W. FERGUSON, Attorney General of the
State of Washington,

Intervenor-Respondent.

**RESPONDENT CITY OF FIFE'S ANSWER TO PETITION
FOR DISCRETIONARY REVIEW**

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CASES

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989 P.2d 1260(1999)5-6
Hutteball v. Montgomery, 187 Wn. 407, 60 P.2d 80 (1936) 6

OTHER AUTHORITIES

Fife Ordinance No. 1872 4 and 6
Fife Ordinance No. 1957 8 and A1
RAP 7.3 2, 4 and 9
RAP 10.3(b) 1

RESPONDENT'S STATEMENT OF THE CASE

Pursuant to RAP 10.3(b), the Respondents are largely satisfied with the Intervenor-Appellants' Statement of the Case, so will not be making a full recital of the facts. The Respondents take exception to the following statements made by the Intervenor-Appellants in their Statement of the Case:

A. THE TRIAL COURT LEVEL

Despite the Intervenor-Appellants' claim to the contrary (Petition for Discretionary Review, page 4), the City of Fife did assert in pleadings and oral arguments at the trial court level that the Intervenor-Appellants lacked standing to intervene. This argument was made in the City of Fife's *Answer to the Plaintiff-Intervenor's Complaint in Intervention* (CP 1461), City of Fife's *Opposition to Plaintiff-Intervenor's Motion to Intervene* (CP 1671-1673), and the City of Fife's *Memorandum in Support of the City's Motion for Reconsideration of Court's Grant of Intervenor Status* (CP 1802-1806)

B. THE APPEAL

On page 7, the Intervenor-Appellants states the City of Fife was not entitled to file a reply brief to the Intervenor-Appellant's

opposition brief. The Respondent's brief was incorrectly titled as a reply brief in opposition. It should have been titled as a response brief to the Appellant's motion, which the Respondent was entitled to make. At the time of the filing, no objection was made by any party, and the Court of Appeals accepted the City's filing as part of the record.

Additionally on page 7, the Intervenor-Appellant again asserts that the City of Fife never raised the issue of standing at the trial court level, and the City reassert that it did, referring to the CP cites above.

Finally, the City takes exception to all characterizations by Intervenor-Appellants in the Statement of the Case of the Court of Appeals' actions being "improper" or "untimely."

SUMMARY OF ARGUMENTS IN RESPONSE TO INTERVENOR-APPELLANTS' STATEMENT OF ISSUES

1. The Court of Appeals has the authority to dismiss an entire case when it has been fairly and orderly reviewed.
2. The Intervenor-Appellants lack standing to continue the case.
3. The entire case is moot because there is no marijuana ban in the City of Fife.

ARGUMENTS AND AUTHORITIES

1. The Court of Appeals Has The Authority To Dismiss An Entire Case When It Has Been Fairly And Orderly Reviewed

RAP 7.3, titled “Authority of Appellate Court,” states the following:

“The appellate court has the authority to determine whether a matter is properly before it, and to perform all acts necessary or appropriate to secure the fair and orderly review of a case. The Court of Appeals retains authority to act in a case pending before it until review is accepted by the Supreme Court, unless the Supreme Court directs otherwise.”

This case involved an ordinance by the City of Fife banning marijuana businesses within its city limits, and a company who tried to open a marijuana business in Fife, and was denied. At the trial court level, the City of Fife prevailed. (CP 1435). Plaintiff MMH, LLC filed an appeal to the appellate level. (CP1463). Ten months after oral arguments were heard, but before the Court of Appeals issued its opinion, those parties, Defendant City of Fife and Plaintiff MMH, came to an acceptable settlement of the issues between them. (*Respondent’s Reply in Opposition*, filed with the COA on October 11, 2016). As a result, Plaintiff MMH voluntarily withdrew their appeal from the Court of Appeals. (*Appellant’s Motion for Voluntary Withdrawal*, filed with the COA on October 3, 2016). The issues underlying the case were resolved to the satisfaction of the affected parties, the key word being “affected.”

The Intervenor-Appellants are three businesses, locate in Tacoma, Pacific, and Wenatchee. (CP 1552). None are located in the City of Fife,

nor have any stated an intention of being located in the City of Fife. (CP 1660). None are affected by any City of Fife ordinance, nor would they be affected by this Court's ruling regarding a City of Fife ordinance. (Id.) They do not have a direct interest at all; the Intervenor-Appellants will neither gain, nor lose, anything as a direct effect of this Court issuing an opinion in this case. (Id.) They have no standing to be in this case. All of the standing, all of the issues, resided with MMH, and with their voluntary withdrawal, there is nothing left to resolve in this case. The Court of Appeals recognized this when it dismissed the entire case upon Appellant Plaintiff MMH's request, and then subsequently denied the Intervenor-Appellants' Motion for Reconsideration of that dismissal. (*COA Orders*, entered October 4, 2016 and November 3, 2016).

According to RAP 7.3, the Court of Appeals has the authority to perform all acts necessary or appropriate to secure the fair and orderly review of a case. This case has been fairly and orderly reviewed, and the issues have been resolved. Because of this, the Court of Appeals acted within the scope of its authority by ordering the entire case dismissed.

2. The Intervenor-Appellants Lack Standing

As argued before the trial court and reasserted to the Court of Appeals, the Intervenor-Appellants lack standing to continue this case on their own, once the primary Plaintiff/Appellant had withdrawn. The Court

of Appeals tacitly acknowledged this when it ordered the entire case dismissed and denied the Motion for Reconsideration of that dismissal.

The entirety of this lawsuit involved a challenge to Respondent City of Fife passing Ordinance 1872 in 2014, which banned marijuana production, processing, and retail sales businesses, within the five square miles of Fife's city limits. MMH, LLC executed a lease on a retail establishment within the City of Fife, and then applied for a business license from Fife for a retail marijuana outlet. (CP 0004.) MMH's business license application was denied by Fife. (CP 0007.) MMH had clear standing under the law to file this lawsuit challenging the validity of Ordinance 1872.

In stark contrast, Intervenor-Appellants Downtown Cannabis Co. LLC, Monkey Grass Farms, LLC, and Jar Mgmt, LLC are not located in the City of Fife. Downtown Cannabis Co., LLC is located in the City of Pacific. (CP 1586-87) Monkey Grass Farms, LLC is located outside of the City of Wenatchee, in Chelan County, Washington. (CP 1582.) Jar Mgmt, LLC is located in the City of Tacoma. (CP 1584.)

These companies (hereafter "PWT Businesses" to reflect their locations in, or near, the cities of Pacific, Wenatchee, and Tacoma) have not applied for a business license in Fife, nor made any attempt to locate within Fife's city limits. (CP 1582-83, 1584-85, 1586-88.) They are not subject to the Fife Municipal City Code. The City of Fife has no power to regulate any of the PWT businesses or enforce any of its ordinances or regulations against them, as Fife has no jurisdiction over them. Whether or not the City

of Fife has a marijuana ban has absolutely no impact, economic or otherwise, on the PWT Businesses.

The PWT Businesses had no right to continue this lawsuit as intervenors. A party has the right to intervene if the disposition of an action may impair or impede its ability to protect one or more of its legally cognizable interests, *Columbia Gorge Audubon Society v. Klickitat County*, 98 WnApp 618, 629, 989 P.2d 1260 (Div. 3 1999), but an interest justifying intervention must be of “such **direct and immediate character** that the intervenor[s] will either gain or lose by **direct operation and effect of judgment.**” *Hutteball v. Montgomery*, 187 Wn 407, 409, 60 P.2d 80 (1936) (emphasis added). The PWT Businesses fail to meet both of these requirements.

The PWT Businesses have no “legally cognizable interest” that could be impaired or impeded by a decision in this case. The PWT businesses will gain or lose nothing by the “direct operation and effect of the judgment.” Their interest in this case is academic only, which is not the “direct and immediate” standard required by the Supreme Court in *Hutteball*.¹ No matter what ruling this Court makes regarding Fife’s ordinances, none of the PWT Businesses will be affected. They will all continue to do business as they did before the filing of this lawsuit, and as they have during this lawsuit. An ordinance regulating business within the

¹ *Id.*

five square miles of the City of Fife simply has no impact or direct effect, on a business located in Tacoma, or in Pacific, or in Wenatchee.

The only party with standing and a direct interest in upholding or invalidating a City of Fife ordinance was MMH. MMH voluntarily withdrew its appeal. As such, the Court of Appeals was correct in saying that “the issues underlying this appeal have been resolved.” (*COA Order*, filed October 4, 2016).

3. The City of Fife Currently Has No Ban On Marijuana Businesses

Even if this Court finds that the Court of Appeals should not have dismissed the entire case, and finds that the Intervenor-Appellants have standing to continue it, this Court should still deny the Intervenor-Appellants’ request for direct review because the issue is moot.

As the Intervenor-Appellants correctly stated in their Statement of Facts, the Settlement Agreement between MMH, LLC and the City of Fife specified that the City of Fife would initiate a public process to consider modifying Ordinance 1872. The City of Fife did initiate such a process by directing the City of Fife Planning Commission to take the issue under consideration and to present the Fife City Council with a recommendation.²

The Fife Planning Commission first started their reconsideration of the marijuana issue at their regularly scheduled November 7, 2016, meeting.³ The Fife Planning Commission discussed the issue at the

² Declaration of Angela Woods, @ Appendix A1

³ *Id.*

November, December, and February regular meetings.⁴ At the February 13, 2017, meeting, the Fife Planning Commission voted to send a recommendation to the Fife City Council, a recommendation which allowed for marijuana processors, producers, and retail businesses within the City of Fife in certain zoning areas and under certain conditions.⁵ On February 28, 2017, the Fife City Council held a public hearing on the matter.⁶ After the public hearing, the Fife City Council moved to suspend its rules about not taking action on an issue during the same meeting when the public hearing had taken place, and voted to approve the Planning Commission's recommendations, codified in City of Fife Ordinance 1957.⁷ The vote was unanimous.⁸ Ordinance 1957 was published on March 2, 2017, and became effective March 7, 2017. (See certified copy of Ordinance 1957 attached as Exhibit A to the Declaration of Angela Woods, attached in the Appendix at A1.)

As of March 7, 2017, there is no ban on marijuana businesses in the City of Fife. Therefore, the Intervenor-Appellants' entire justification for requesting this review, that the "underlying dispute involves a question of broad public interest" as to "whether a local jurisdiction has the authority to ban the retail sales of marijuana," no longer exists in this case. There is no City of Fife ban on the retail sales of marijuana, nor marijuana production

⁴ Id.

⁵ Id.

⁶ Id.

⁷ Id.

⁸ Id.

businesses, nor marijuana producer businesses, and so this Court should deny the request for discretionary review.

CONCLUSION

This case no longer has underlying issues to be resolved, nor even a plaintiff with standing to argue that it does. Once Plaintiff Appellant MMH, LLC and the Defendant Respondent City of Fife reached a settlement, and Plaintiff MMH made its motion to withdraw its appeal, the case was over. The Court of Appeals correctly concluded that “the issues underlying this appeal have been resolved,” and, using the authority granted it in RAP 7.3, correctly dismissed the entire case. The Intervenor-Appellants do not have standing to continue the case, and even if they did, the “marijuana ban” in Fife they are arguing against no longer exists, rendering the entire case moot. For these reasons, the Respondent City of Fife respectfully requests that this Court deny the Petition for Discretionary Review.

RESPECTFULLY SUBMITTED this 14th day of March, 2017.

VSI LAW GROUP, PLLC.

By:



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Attorneys for Respondent, City of Fife

DECLARATION OF SERVICE

I, Alison Rigby, certify, under penalty of perjury under the laws of the state of Washington, that I served, via electronic mail, by agreement of the parties, a true and correct copy of the *Respondent City of Fife's Answer to Petition for Discretionary Review*, upon the following:

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DATED this 14th day of March, 2017, at Tacoma, Washington.

VSI LAW GROUP, PLLC

/s/ Alison Rigby
Alison Rigby, Paralegal

APPENDIX

No. 94083-5

SUPREME COURT OF THE STATE OF WASHINGTON

MMH, LLC and GRAYBEARD
HOLDINGS, LLC,
Appellants,
and

DOWNTOWN CANNABIS CO.,
LLC; MONEY GRASS
FARMS, LLC; AND JAR MGMT,
LLC, d/b/a/ RANIER ON PINE,
Intervenor-Appellants,

v.

CITY OF FIFE,
Respondent,

and

ROBERT W. FERGUSON,
Attorney General of the
State of Washington,
Intervenor-Respondent.

**DECLARATION OF ANGELA
WOODS IN SUPPORT OF
RESPONDENT CITY OF
FIFE'S ANSWER TO
INTERVENOR-APPELLANTS'
REQUEST FOR
DISCRETIONARY REVIEW**

The undersigned makes the following Declaration under penalty of perjury as permitted by RCW 9A.72.085:

I, Angela Woods, state and declare as follows:

1. I am over the age of eighteen (18) and not a party to the above referenced action. The matters hereinafter set forth are within my

own direct knowledge and I am competent to provide evidence and testimony in these proceedings.

2. I am the Deputy City Clerk for the City of Fife.
3. On November 7, 2016, at a regularly scheduled meeting and upon instruction by the City Council, the Planning Commission for the City of Fife started revisiting the idea of marijuana business regulations in the City.
4. The issue was discussed at the November, December, and February meetings.
5. On February 13, 2017, at a regularly scheduled meeting, the Planning Commission recommended to the City Council a new set of regulations allowing marijuana production, processing, and retail within the city limits.
6. On February 28, 2017, at a regularly scheduled meeting, the Fife City Council conducted a public hearing on the matter of the Planning Commission's recommendation, embodied in proposed Ordinance 1957.
7. After giving the public an opportunity to testify at the public hearing, the public hearing was closed, and the 1st reading of proposed Ordinance 1957 was heard.
8. After the 1st reading of the ordinance, Councilmember Gethers moved to suspend the council rules regarding not taking action on a subject during the same meeting as a public hearing on that subject and to approve final passage of Ordinance 1957.
9. Councilmember Wolfrom seconded the motion, and the motion carried unanimously, 5-0. (At the time of the meeting, one seat

on the council was vacant, and one councilmember was not present.)

10. The Ordinance was published on March 2, 2017, and became effective on March 7, 2017.
11. Attached as Exhibit A to this declaration is a certified copy of Ordinance No. 1957.

DATED this 14th day of March, 2017.

By: Angela Woods
Angela Woods, Deputy City Clerk for
City of Fife

CERTIFICATION

I, the undersigned, Deputy City Clerk of the City of Fife, Washington, hereby certify that the attached Ordinance No. 1957, is a true and correct copy of the original Ordinance No. 1957 on file with the Fife City Clerk's Office.

CITY OF FIFE, WASHINGTON



Angela M. Woods
Angela M. Woods, Deputy City Clerk

ORDINANCE NO. 1957

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FIFE, PIERCE COUNTY, WASHINGTON CHANGING THE CITY'S MARIJUANA REGULATIONS; REPEALING FIFE MUNICIPAL CODE ("FMC") SECTIONS 19.44.045 AND 19.48.045; AMENDING FMC CHAPTER 19.06, SECTION 19.44.020, AND 19.48.020; AND ADDING NEW SECTIONS 19.10.060 AND 19.68.085

WHEREAS, in November 2012, Washington State voters approved Initiative 502 (I-502), which "authorizes the Washington State Liquor Control Board to regulate and tax marijuana for persons twenty-one years of age and older, and add a new threshold for driving under the influence of marijuana" (I-502, Sec. 1(3)); and

WHEREAS, I-502 allows the Liquor Control Board (now known as the Washington State Liquor Cannabis Board, hereinafter "WSLCB") to license marijuana producers "to produce marijuana for sale at wholesale to marijuana processors and other marijuana producers" (I-502, Sec. 4(1)); and

WHEREAS, I-502 allows the WSLCB to license marijuana processors to "process, package, and label usable marijuana and marijuana-infused products for sale at wholesale to marijuana retailers" (I-502, Sec. 4(2)); and

WHEREAS, I-502 allows the WSLCB to license marijuana retailers to "sell usable marijuana and marijuana-infused products at retail in retail outlets" (I-502, Sec. 4(3)); and

WHEREAS, on August 13, 2013 the City of Fife City Council passed Ordinance No. 1841 imposing a one year moratorium on the establishment, location, permitting, licensing or operation of medical marijuana collective gardens and marijuana production, processing and retailing; and

WHEREAS, Ordinance No. 1841 included a one year work program for the City's development of regulations for marijuana related land uses; and

WHEREAS, Ordinance No. 1841 provides that the Planning Commission is to make a recommendation to the City Council on development regulations for marijuana related land uses; and

WHEREAS, on August 29, 2013 the U.S. Department of Justice issued a memorandum regarding its guidance on marijuana enforcement which generally indicates that the federal government will not interfere with State marijuana regulation, if the States create a tightly regulated market that address certain federal enforcement priorities identified in that memorandum; and

WHEREAS, despite the August 29, 2013 U.S. Department of Justice memorandum, the cultivation, possession, or distribution of cannabis marijuana, and marijuana products has been and continues to be a violation of federal law through the Controlled Substances Act; and

WHEREAS, in September 2013 the Washington State Liquor Cannabis Board adopted rules for implementation of I-502 which became effective in October 2013; and

WHEREAS, in November 2013 the Washington State Liquor Cannabis Board began accepting State license applications for marijuana producers, processors, and retailers authorized by I-502; and

WHEREAS, on January 16, 2014 the Washington State Attorney General issued a formal opinion, in response to a request from the Washington State Liquor Cannabis Board, that concluded that local governments have the authority to prohibit and/or regulate I-502 related land uses through zoning/licensing; and

WHEREAS, the State Environmental Policy Act (SEPA) checklist prepared by the Washington State Liquor Cannabis Board on the proposed rulemaking for WAC 314-55 related to marijuana licenses, application process, requirements, and reporting includes the statement that "A licensee must follow all local and state land and shoreline laws and regulations"; and

WHEREAS, on January 27, 2014 the City of Fife Planning Commission held a special meeting expressly for the purpose of taking public comment on how the City might proceed on developing zoning amendments to address marijuana production, processing and sales; and

WHEREAS, studies related to secondary effects of marijuana land uses were compiled and presented to the Planning Commission, with said studies being available for public inspection at the City of Fife Department of Community Development; and

WHEREAS, the Planning Commission considered public comment, the WSLCB adopted Rules, federal and state law, and secondary impacts as directed by Ordinance No. 1841 and forwarded zoning amendments to allow marijuana production, processing and sales; and

WHEREAS, on March 27, 2014, the City of Fife State Environmental Policy Act (SEPA) Responsible Official issued a SEPA Determination of Non-Significance (SEP14-0001) on the proposed code amendment with no appeal filed; and

WHEREAS, on July 8, 2014 the Fife City Council adopted Ordinance 1872 prohibiting Marijuana producing, processing, retailing or retailers including Medical marijuana collective gardens; and

WHEREAS, section 14 of Ordinance 1872 directs the City Manager to report back to the Council at such time as statistically significant data on impacts upon jurisdictions who have legalized marijuana production, processing, and retailing has been established and/or when significant legal changes have occurred; and

WHEREAS, a business owner filed suit in Pierce County Superior Court, challenging the constitutionality of Ordinance 1872; and

WHEREAS, the trial court upheld the validity of Ordinance 1872; and

WHEREAS, the trial court's decision was appealed to the Washington State Court of Appeals Division II; but that Court did not file an opinion in the case; and

WHEREAS, in 2016 the Puyallup Tribe of Indians obtained permission from the State of Washington to conduct retail sales of marijuana and opened a Retail Marijuana Outlet at an existing building on February 17, 2017, located in the City of Fife; and

WHEREAS, at the time that Ordinance 1872 was passed there was no information relating to the impacts on local services, including police services, from having a retail marijuana outlet located within a community; and

WHEREAS, now there is significant evidence to support the position that impacts on local public services are not greater than other retail, and in some cases less than, other retail businesses in the community; and

WHEREAS, since the adoption of Ordinance 1872, the State modified the tax scheme so that it now shares a portion of tax revenues generated from retail marijuana sales with the communities within which a retail marijuana outlet is located, thus making up for the lost revenues to the community and providing funding for needed public services; and

WHEREAS, in addition, the modification of the tax scheme now also allows municipalities who simply do not ban marijuana businesses to receive a portion of the marijuana excise tax revenue; and

WHEREAS, because of the above listed changed circumstances, on October 11, 2016, the Fife City Council passed Resolution 1740, which provides for the dismissal of the lawsuit; and

WHEREAS, Resolution 1740 directed that the Planning Commission review their April & May 2014 recommendations concerning marijuana production, processing and retail sales and include a recommendation to “cluster retail outlets” as an alternative; and

WHEREAS, at a public meetings held on November 7, 2016, December 6, 2016 and February 13, 2017, the Planning Commission, reviewed the 2014 recommendations and the retail outlet cluster alternative and recommend that City Council approve zoning code amendments to allow marijuana production, processing and sales; and

WHEREAS, in accordance with RCW 36.70A.106(3)(b), the City of Fife transmitted the proposed development regulation amendment to the Washington State Department of Commerce for the purpose of State agency review requesting expedited review with said expedited review having been granted and no comments from State agencies having been received; and

WHEREAS, the City of Fife State Environmental Policy Act (SEPA) Responsible Official has determined that the proposed zoning amendments are consistent with the prior SEPA Determination of Non-Significance (SEP14-0001); and

WHEREAS, on February 28, 2017, the Fife City Council held a public hearing on the proposed amendments as recommended by the Planning Commission; and

WHEREAS, the City of Fife has fulfilled all procedural requirements for the adoption of the development regulations; now therefore

THE CITY COUNCIL OF THE CITY OF FIFE, PIERCE COUNTY, WASHINGTON DO
ORDAIN AS FOLLOWS:

Section 1. Repealer. Section 19.44.045 of the Fife Municipal Code is hereby repealed.

Section 2. Repealer. Section 19.48.045 of the Fife Municipal Code is hereby repealed.

Section 3. Section 19.06 of the Fife Municipal Code is amended to read as follows:

19.06.471 Marijuana or marihuana

"Marijuana" or "marihuana" shall be defined pursuant to RCW 69.50.101, now or hereafter amended.

19.06.472 Marijuana concentrates

"Marijuana concentrates" shall be defined pursuant to RCW 69.50.101, now or hereafter amended.

19.06.473 Marijuana processing

"Marijuana processing" shall be defined pursuant to RCW 69.50.101, now or hereafter amended.

19.06.474 Marijuana producing

"Marijuana producing" shall be defined pursuant to RCW 69.50.101, now or hereafter amended.

19.06.475 Marijuana-infused products

"Marijuana-infused products" shall be defined pursuant to RCW 69.50.101, now or hereafter amended.

19.06.476 Marijuana retailing or Marijuana retailer

"Marijuana retailing" or "Marijuana retailer" shall be defined pursuant to RCW 69.50.101, now or hereafter amended.

19.06.477 Marijuana, useable

"Marijuana, useable" (or "useable marijuana") shall be defined pursuant to RCW 69.50.101, now or hereafter amended.

Section 4. Section 19.44020 of the Fife Municipal Code is amended to read as follows:

19.44.020 Permitted uses.

Permitted uses in the RC district are:

- A. Single-family dwelling;
- B. Duplex dwelling;
- C. Multifamily structure consisting of retirement home located within 500 feet of a transit line permitted through a planned residential development (PRD);
- D. Mixed use structure only if permitted through a planned residential development (PRD), and where all residential units are located on the upper floors of a mixed use structure with nonresidential uses on the first floor, and meeting the design requirements of Chapter 19.60 FMC;
- E. Adult or child day-care center;

- F. General group home;
- G. Manufactured home park through a planned residential development (PRD);
- H. Agricultural use, including plant nursery, feed and seed store, livestock (see Chapter 19.68 FMC) and roadside stand for the sale of agricultural goods;
- I. Professional office;
- J. Veterinary clinic, with treatment and storage of animals within an enclosed building;
- K. Retail sales store including, but not limited to, the sale or rental of the following items: antiques, appliances, art, automobiles, baked goods, bicycles, boats, books, carpets, clothing, convenience goods, fabrics, flowers, food, furniture, garden supply, gifts, glass (artistic or commercial use), hardware, hobby supplies, jewelry, lumber, motorcycles, newspapers, office equipment or supplies, paint, pets or pet supplies, pharmaceuticals, photography supplies, pottery, secondhand merchandise, shoes, sporting goods, stationery, textile, tile, toys, vehicle parts (new/remanufactured), videos and wallpaper;
- L. Retail sales office and lot including, but not limited to, automobile, boat, manufactured home (sales only), recreational vehicle and truck sales;
- M. Commercial service including, but not limited to, advertising, ambulance (private), auction (indoor), banking, beauty and hair care, cleaning, consulting, construction contracting, copying, decorating, dry cleaning, employment, funeral, glass (repair, replacement, studios), financial, gasoline (station), health (club), insurance, kennel (indoor), laundry, locksmithing, masonry, newspapers, paging, parcel delivery, pet grooming, plumbing, printing (small-scale), studio photography, real estate sales, repair of products listed in subsection (K) of this section, roofing, security, signs, tailoring, telecommunication sales, title, upholstery, vehicle detailing, vehicle painting and vehicle washing;
- N. Indoor entertainment facility including, but not limited to, arcade, billiard room, bowling alley, movie or stage theater, miniature golf course, skating/skateboard facility, racquetball court and tennis court. Excludes shooting range;
- O. Commercial instruction including, but not limited to, airline, art, barber, beauty, business, computer, dance, driving, gaming dealers, language, music, photography, self-defense and trade;
- P. Public and quasi-public use and facility including, but not limited to, community center, court, fire station, governmental office, museum, parking facility, park, police station, pool, post office, public works facility, senior center, school, substation, utility and well facility;
- Q. Vehicle repair, minor or major. A vehicle for repair shall not be located in the front yard for more than one week. On-site storage of vehicles not actively being repaired or used by the facility shall be prohibited;
- R. Radio station;
- S. Hotel;
- T. Supermarket;
- U. Shopping center;
- V. Restaurant, excluding dancing, live stage or similar entertainment activities;
- W. Espresso stand;
- X. Liquor store, located at least 500 feet from the closest property line of any public school or park;
- Y. Bar, tavern and nightclub, located at least 500 feet from the closest property line of any public school, park, adult use business, residential use and residential zoning district;
- Z. Religious institution;
- AA. Civic, labor, social or fraternal organization;

- BB. Technological use including, but not limited to, scientific research, testing and experimental development laboratory (excludes biotechnology);
- CC. Attached wireless communication facility (WCF) on nonresidential attachment structure (see Chapter 19.72 FMC);
- DD. An off-site parking lot located within 500 feet of the associated use lot; provided, that the off-street parking lot is legally encumbered to serve the associated use;
- EE. Mini-storage;
- FF. Electric vehicle infrastructure;
- GG. Mobile food units subject to the requirements of FMC section 19.68.075;
- HH. Marijuana retailing subject to the requirements of FMC sections 19.10.060(B) and 19.68.085(B);

Section 5. Section 19.48.020 of the Fife Municipal Code is amended to read as follows:

19.48.020 Permitted uses.

Permitted uses in the I district are:

- A. Existing dwelling unit. A legally constructed dwelling unit for residential occupancy as of the effective date of the ordinance codified in this title;
- B. Manufacturing of products using processed materials. Chemical, paint and tire related manufacturing are excluded;
- C. Pharmaceutical products manufacturing;
- D. Food products manufacturing, excluding meat products, seafood products, distilling, fermenting, canning, slaughtering, rendering, curing and tanning;
- E. Machine shop;
- F. Saw and filing shop;
- G. Assembly of commercial, professional or household electronic components, products and equipment including, but not limited to, appliances, communication devices, computers and related accessories, stereo equipment, telecommunications equipment and televisions;
- H. Warehousing and distribution facilities, including mini-storage. Excludes ocean cargo container storage yard;
- I. Mail and package shipping facilities;
- J. Professional offices;
- K. Construction contracting;
- L. Technological uses including scientific research, testing and experimental development laboratories (excludes biotechnology);
- M. Retail and wholesale sale of products manufactured on-site. The site shall be on a lot with at least 100 feet of frontage on a principal or minor arterial;
- N. Agricultural use, including plant nursery, feed and seed store, livestock (see Chapter 19.68 FMC) and roadside stand for the sale of agricultural goods;
- O. Retail sales or service use, fronting on a minor or principal arterial, which shall primarily serve the needs of the industrial district, be compatible with the permitted types of industrial uses, and not interfere with the orderly development of the industrial area;
 1. Permitted uses include, but are not limited to, the sale or rental of the following items: electronic equipment, forklifts, heavy equipment, trucks, newspapers and office equipment and supplies;
 2. Permitted uses include, but are not limited to, the following services: electric motor repair, espresso stand (including drive-thru), heavy equipment repair, vehicle wash and vehicle repair;

3. Other retail and service type uses which are within the same structure as a permitted manufacturing, warehousing, distribution or office use and occupy less than or equal to 35 percent of the structure's gross floor area;

4. Additional permitted uses within retail overlay zone:

Retail sales store including, but not limited to, the sale or rental of the following items: antiques, appliances, art, automobiles, baked goods, bicycles, boats, books, carpets, clothing, convenience goods, fabrics, flowers, food, furniture, garden supply, gifts, glass (artistic or commercial use), hardware, hobby supplies, jewelry, lumber, motorcycles, newspapers, office equipment or supplies, paint, pets or pet supplies, pharmaceuticals, photography supplies, pottery, secondhand merchandise, shoes, sporting goods, stationery, textile, tile, toys, vehicle parts (new/remanufactured), videos and wallpaper;

P. Public and quasi-public use and facility including, but not limited to, community center, court, fire station, governmental office, museum, parking facility, park, police station, pool, post office, public works facility, senior center, school, substation, utility and well facility;

Q. Commercial parking lots and park and ride lots;

R. Armored vehicle facility;

S. Printing establishment (large-scale);

T. Recycling collection site and recycling facilities (indoor) including glass, plastic, metal, cardboard and newspaper;

U. Monopole or lattice WCF less than or equal to 150 feet in height. Located within WCF permitted use overlay and subject to Chapter 19.72 FMC;

V. Electric vehicle infrastructure;

W. Mobile food units subject to the requirements of FMC section 19.68.075;

X. Marijuana processing subject to the requirements in FMC section 19.10.060(B) and 19.68.085(C);

Y. Marijuana producing subject to the requirements in FMC section 19.10.060(B) and 19.68.085(C).

Section 6. Section 19.10.060 of the Fife Municipal Code is added to read as follows:

The regulations implementing FMC 19.02.020 are hereby established and declared to be in effect upon all land included within the boundaries of each and every zoning district shown upon the official zoning map.

A. Title Compliance. Except as provided elsewhere in this title:

1. No structure shall be erected and no existing structure shall be moved, altered, reconstructed, replaced or enlarged, nor shall any land or structure be used for any purpose or in any manner other than a use listed in this title as permitted in the zoning district in which such land or structure is located.
2. No structure shall be erected, nor shall any existing structure be moved, altered, reconstructed, replaced or enlarged to exceed in height the limit established by this title for the zoning district in which such structure is located.
3. No structure shall be erected nor shall any structure be moved, altered, reconstructed, replaced or enlarged, nor shall any open space surrounding any structure be encroached upon or reduced in any manner, except in conformity with the development requirements established by this title for the zoning district in which such structure is located.
4. No improvement, yard or open space on a lot shall be considered as providing improvement, yard or open space for another lot except as provided for by this title.

B. The “Marijuana Limited Zone Overlay Map” is hereby created established, delineated and incorporated into this title (See Exhibit 1). The official Marijuana Limited Zone Overlay Map is on File with the City Clerk.

1. Marijuana retail outlets may be allowed only in areas depicted as “Eligible Retail” within the Regional Commercial district subject to all requirements found in Chapters 19.44 and Marijuana Land Uses Chapter 19.68.85(B).
2. Marijuana producing and marijuana processing may be allowed only in areas depicted as “Eligible Production and Processing” within the Industrial district subject to all requirements found in Chapters 19.48, and Marijuana Land Uses Chapter 19.68.85(C).

Section 7. Section 19.68.085 of the Fife Municipal Code is added to read as follows:

19.68.085 Marijuana Land Uses

A. The production, processing, and retailing of marijuana are, and remain, illegal under federal law. Nothing herein or as provided elsewhere in the ordinances of the city of Fife is an authorization to circumvent federal law or to provide permission to any person or entity to violate federal law. Only Washington State licensed marijuana producers, marijuana processors, and marijuana retailers may locate in the city of Fife, and then only pursuant to a license issued by the state of Washington.

B. Marijuana retail outlets may be permitted in the Regional Commercial zone subject to all requirements applicable to the zoning district (Chapter 19.44) and all of the following:

1. Shall be State licensed by the Washington State Liquor Cannabis Board;
2. Shall have a current City of Fife business license;
3. Shall be subject to all applicable requirements of Title 69 RCW and Chapter 314-55 WAC and other state statutes, as they now exist or may be amended;
4. May be located only in areas identified as “Eligible Retail” on the “Marijuana Limited Zone Overlay Map” (Chapter 19.10);
5. Hours of operations shall be limited to 8:00 AM to 12:00 AM
6. Shall be subject to all other applicable requirements of Fife Municipal Code;
7. Marijuana retail businesses shall not be permitted as a home occupation.

C. Marijuana producing and Marijuana processing are permitted in the Industrial Zone subject to all requirements applicable to the zoning district and the following:

1. Shall be State licensed by the Washington State Liquor Cannabis Board;
2. Shall have a current City of Fife business license;
3. Shall be subject to all applicable requirements of Title 69 RCW and Chapter 314-55 WAC and all other state statutes, as they now exist or may be amended;
4. May be located only in areas identified as “Eligible Production and Processing” on the “Marijuana Limited Zone Overlay Map” (Chapter 19.10);
5. The production and processing of marijuana shall be considered “manufacturing” and subject to all other applicable requirements of Fife Municipal Code;
6. Shall not be permitted as a home occupation.

Section 8. Ordinance Publication and Effective Date. This Ordinance shall be in full force and effect five (5) days after publication as required by law. A summary of this Ordinance may be published in lieu of the entire Ordinance, as authorized by State law.

Section 9. Severability. Each and every provision of this Ordinance shall be deemed severable. If any provision of this Ordinance should be deemed to be unconstitutional or otherwise contrary to law by a court of competent jurisdiction, then it shall not affect the validity of the remaining sections so long as the intent of the Ordinance can be fulfilled without the illegal section.

Introduced the 28th day of February, 2017.

Passed by the City Council on the 28 day of February, 2017.



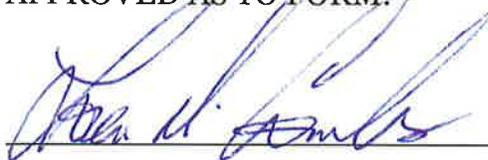
Subir Mukerjee, City Manager

ATTEST:

 Acting for

Carol Etgen, City Clerk

APPROVED AS TO FORM:



Loren D. Combs, City Attorney

Published: March 2, 2017

Effective Date: March 9th, 2017

ORDINANCE NO. 1957
Exhibit 1
Marijuana Limited Zone Overlay Map

