



CR 102 Memorandum

Regarding WAC 314-55-020 – Marijuana license qualifications and application process—Licensing change requests.

Date: October 28, 2020

Presented by: Casey Schaufler, Policy and Rules Coordinator

Background

The Washington State Liquor and Cannabis Board (Board) is generally prohibited from issuing a marijuana license for any premises within 1000 feet of an elementary or secondary school, playground, recreation center, child care center, public park, public transit center, library, or game arcade admission that is not restricted to a person age 21 or older.

A local government may adopt an ordinance that reduces the 1000-foot buffer zone to not less than 100 feet of a recreation center, child care center, public park, public transit center, library, or game arcade admission that is not restricted to a person age 21 or older. The Board may issue a license to marijuana producers, processors, transporters, and retailers in compliance with a local distance-reduction ordinance, so long as the distance reduction will not negatively impact the jurisdiction's civil regulatory enforcement, criminal law enforcement interests, public safety, or public health.

A local government may adopt an ordinance that reduces the 1000-foot buffer zone to not less than 100 feet of all of the above listed entities/facilities for the purpose of licensing a marijuana research facility. However, the distance reduction must not negatively impact the jurisdiction's civil regulatory enforcement, criminal law enforcement interests, public safety, or public health. Before issuing or renewing a marijuana research license for a premises located within 1000 feet, but not less than 100 feet of an elementary school, secondary school, or playground in compliance with a local distance-reduction ordinance, the Board must ensure the facility meets the following requirements:

- The facility must meet a security standard exceeding the standard applicable to marijuana producer, processor, or retailer licensees;
- The facility must be inaccessible to the public and no part of the operation of the facility may be in view of the general public; and
- The facility may bear no advertising or signage indicating it is a marijuana research facility.

Substitute Senate Bill 6206 (Chapter 154, Laws of 2020) amended RCW 69.50.331, now codified as RCW 69.50.331(8)(e), by adding a subsection (e) to create a certificate of compliance for marijuana business premises. The amendment became effective June 11, 2020, and requires that the Board must issue a certificate of compliance for a marijuana business applicant's premises, if the premises meets the statutory buffer zone requirements at the time the application was filed. The certificate allows the licensee to operate the business at the proposed location notwithstanding a later occurring, otherwise disqualifying factor. This certificate is not a license to produce, process, research, or sell marijuana at the location. All other marijuana licensing requirements must be met in order to receive a license or to continue operating under an existing license.

The legislation was designed to prevent a competitor from opening a business that would disqualify another marijuana entity's license application. During legislative testimony, it was noted that this situation has occurred with some frequency, after an applicant had spent the money to secure a lease, and a competitor moved a business (such as an arcade business) next door, violating the zoning restrictions for the new applicant. The legislation provides certainty for applicants with considerable investment in their businesses who are waiting for completion of the Board's license approval process.

Rule Necessity

Amendment to existing rule is necessary to allow the WSLCB to issue a certificate of compliance consistent with the mandates of SSB 6206, now codified as RCW 69.50.331(8).

Description of Rule Changes

Amended Subsection. WAC 314-55-020(6) – The proposed amendment allows the WSLCB to issue a certificate of compliance to an applicant if proposed business premises meets the minimum distance requirement as of the date the application was received by the WSLCB. The proposed amendment also allows applicants granted licenses prior to the future adoption of this rule to operate their business without being affected by a future disqualifying distance factor.

Additionally, existing subsections were renumbered to accommodate this amendment. The statutory reference in subsection (2) was corrected to reflect the codification of SSB 6026 in RCW 69.50.331(8).

Attachments:

Attachment A. (Summary of written comments received following invitation for Public Comment)

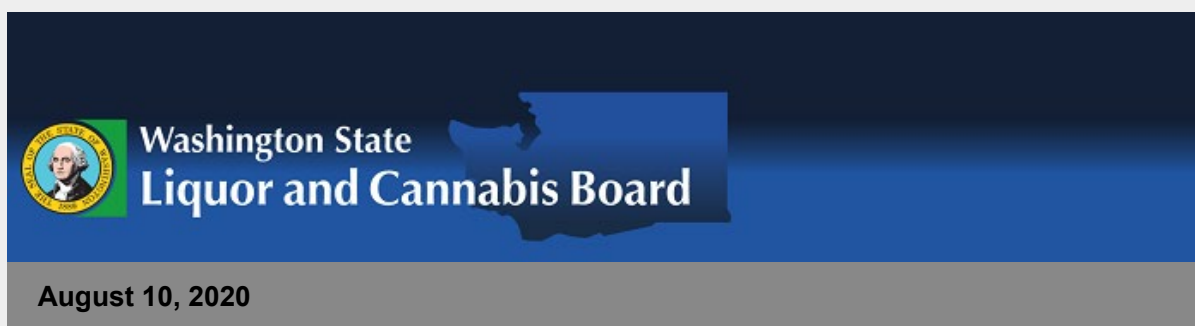
Attachment B. (Invitation for Public Comment GovDelivery message sent August 10, 2020).



Invitation for Public Comment: Draft Conceptual Rules for Marijuana Business Premise Certificate of Compliance

Washington State Liquor and Cannabis Board sent this bulletin at 08/10/2020 02:56 PM PDT

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Invitation for Public Comment: Draft Conceptual Rules for Marijuana Business Premise Certificate of Compliance

The Washington State Liquor and Cannabis Board (WSLCB) is seeking public comment regarding draft conceptual rules. These draft conceptual rules are narrowly scoped to include a new rule subsection that provides a marijuana business premise certificate of compliance. A draft, conceptual version of WAC 314-55-020 is linked [here](#). The new subsection (6) is highlighted in blue.

Background

On July 8, 2020, the WSLCB filed a pre-proposal statement of inquiry (CR 101) to consider amending WAC 314-55-020 to establish a certificate of compliance for marijuana business premises consistent with the mandates of [Substitute Senate Bill \(SSB\) 6206](#) (Chapter 154, Laws of 2020). The CR-101 filing and supporting documents are located [here](#).

Specifically, SSB 6206 amended RCW 69.50.331 to create a certificate of compliance for marijuana business premises, and became effective June 11, 2020. The amendment requires the Board to issue a certificate of compliance for a marijuana business applicant's premises, if the premises met the distance requirements from restricted entities (such as parks, schools, and playgrounds) at the time the application was filed. The certificate allows the licensee to operate the business at the proposed location notwithstanding a

later occurring, otherwise disqualifying factor regarding restricted entities.

The WSLCB invites and encourages your comment on the draft conceptual rule language offered as WAC 314-55-020 (6). Your feedback will be reviewed and considered before a CR 102, or rule proposal, is presented to the Board for approval.

Public Comment

Please forward your comments to Casey Schaufler at casey.schaufler@lcb.wa.gov by **September 4, 2020**. The CR102 proposal is anticipated to be presented to the Board on or after September 30, 2020.

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CR 102 Memo—Marijuana Business Certificate Compliance

Attachment A

Summary of comments received following invitation for public comment.

Source	Commentor	Date Received	Comment
<i>Email</i>	Constance Winter	8/10/2020	I support the new certificate of compliance policy, calling for issuance at the time of application (when the conditions are met) for doing the business. No business should have to move at a later date because a disqualifying business opens nearby. I have connection with the cannabis industry.
<i>Email</i>	Reece Barnett	8/10/2020	<p>This proposal achieves a balance of both limiting disruption in the cannabis business space while allowing future expansion of youth benefiting projects in the future.</p> <p>Given the difficulty of acquiring commercial space. Along with the high cost of improvements, particularly in producing and extraction, the cost to relocate is extreme. It also opens the state up to further lawsuits by parties who feel targeted by new youth centers which could be deemed to be retaliatory under certain circumstances. Furthermore, this proposal will provide an ancillary benefit of observing if Playgrounds, Parks, etc WILL open even if located near a cannabis site. This would provide both the LCB and WA government valuable data for future legislation.</p> <p>I respectfully ask you to consider adopting this measure.</p>
<i>Email</i>	David Benham, Environmental Design Consulting LLC	8/11/2020	I have a few points I want to address. The Tribal Notice should not be an automatic assumption of disapproval if the Tribe does not respond. Like all legal responses the Tribe has an input period they are responsible to utilize and if they do not then they would lose the option of voicing any opinion of approval or disapproval.

CR 102 Memo—Marijuana Business Certificate Compliance

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<i>Email</i>	Harmony Rutter	8/11/2020	After reading the proposed amendment to this WAC, I have no suggestions for its alteration. In its current rendition, the text of the amendment reads smoothly and is easy to understand. It adds a provision for change of location during the application process that is logical and reads as though it was part of the initial document. Thanks for collecting public comment. I am on this mailing list because my domestic partner uses cannabis for managing a chronic pain condition.
<i>Email</i>	Ken Kakuk	8/11/2020	A business buying a Producer Processor license should be able to get a premises approved for relocation of the "newly acquired Producer Processor license" at the same time that they apply for assumption. The way the law is currently the buyer has to assume the license first. If prospective buyers could get a premise approved first or at least at the same time it would facilitate sales. We are retiring and it is a very difficult business to get out of.
<i>Email</i>	Brian Dodge, Globodyne Industries (dba Buds Garage)	8/12/2020	<p>Please remove "minimum distance" from WAC 314-55-020 (6).</p> <p>I think that the WSLCB should avoid explicit reference to distance requirements. There are local municipalities that may grant a variance in the distance set-backs, so, someone could research the history of a particular site location and find that it did not even meet distance requirements back when the license was issued and file a complaint, without knowing that there may have been an approved deviation or variance request. The city of Everett allows for the Planning Director to make variance determinations on his own, which may be subjective or arbitrary. Similar to the "Billboard" definition that the WSLCB came up with, which arbitrarily defines specific numerical distances to the state's definition of a billboard, which directly conflicts with local definitions. BTW, the WSLCB, in this proposal, is arbitrarily deciding that the business meets "distance requirements" as of the date of application in order to grant a CofC. What distance requirements? Whose distance requirements, WSLCB or Local municipality? Why just those requirements?</p> <p>I suggest the WSLCB just simply state that it met the requirements at that time:</p> <p>(6) Consistent with RCW 69.50.331 (8)(e), the WSLCB will issue a Certificate of Compliance if the proposed business location meets the minimum distance requirements as of the date the application was received by the WSLCB. If the physical location changes during the application process, the Certificate of Compliance will be based on the date that the location change was received by the WSLCB.</p>

CR 102 Memo—Marijuana Business Certificate Compliance

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<p><i>Email</i></p>	<p>Faith Lumsden, Code Compliance Director, Seattle Dept. of Construction and Inspections</p>	<p>8/18/2020</p>	<p>The City of Seattle submits the following comment to Notice of Pre-proposal Statement of Inquiry WSR #20-15-043 on establishing a certificate of compliance for marijuana business premises consistent with the mandates of Substitute Senate Bill 6206. The City of Seattle recognizes the certainty desired by applicants when applying for marijuana business licenses.</p> <p>The City requests that the Board clarify the following in any proposed rules regarding SB 6206:</p> <ul style="list-style-type: none"> -The Notice of Marijuana License Applications (LAN) issued to local jurisdictions will contain the true date of application that WSLCB uses to determine whether to issue a certificate of compliance. -Local jurisdictions will continue to have 20 days after the LAN is issued to object to the applicant’s proposed location. Local jurisdictions will use the true date of application in the LAN to determine whether buffering requirements have been met.
<p><i>Email</i></p>	<p>Vicki Christopherson and Brooke Davies, WACA</p>	<p>9/4/2020</p>	<p>WACA brought forward SSB 6206 to address concerns expressed by many of our members. We realize that this rule set is technical in nature and straightforward and our input is brief.</p> <ul style="list-style-type: none"> ● If a licensee decides to sell their license while they are in the process of opening their location will the certificate of compliance transfer to the purchaser? ● There is currently a policy at the WSLCB called “build out approval” that is very similar to the certificate of compliance, however a licensee must proactively request a “build out approval.” <p>WACA recommends clarifying in the draft language that the certificate of compliance is not something you have to request but is automatically granted, if the location meets the minimum distance requirements when the application is received by the WSLCB. The same automatic process would apply if the location changes during the application process.</p> <ul style="list-style-type: none"> ● RCW 69.50.331 uses “distance reduction” and “distance requirements” in (8) to talk about the buffer limits. WAC 314-55-155 also uses the phrase “minimum distance requirements” to discuss proximity of advertising to restricted areas like schools, playgrounds, etc., but neither the RCW or the WAC is consistent in their phrasing for those distance requirements. <ul style="list-style-type: none"> ○ WACA suggests clarifying which minimum distance requirements the WSLCB is looking at by changing it to read: ○ (6) Consistent with RCW 69.50.331 (8)(e), the WSLCB will issue a Certificate of Compliance if the proposed business location premises meets the minimum distance requirements under RCW

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			69.50.331(8)(a)-(d) as of the date the application was received by the WSLCB. If the physical location of the premises changes during the application process, the Certificate of Compliance will be based on the date that the application requesting the location change was received by the WSLCB.
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