



King County

June 7, 2013

Rules Coordinator
Liquor Control Board
P.O. Box 43080
Olympia, WA 98504-3080

RE: Marijuana Producer, Processor and Retailer Rules – Initiative 502

Dear Rules Coordinator:

Thank you for the opportunity to provide comments on the preliminary draft rules for producer, processor and retailer licensing under Initiative 502. King County's goals in commenting on the proposed regulatory framework are to ensure that the new legalized recreational market is tightly regulated and controlled through strong, clear rules without creating unnecessary barriers to business entry. We also support an administrative structure that clearly delineates Washington State Liquor Control Board responsibilities from local government responsibilities. More specifically, we also support ensuring that benefits and impacts from the legalization of this product address issues of equity, e.g., not disproportionately impacting particular geographic or ethnic or other communities or groups, and eliminating the black market in marijuana, in order to reduce disproportionate enforcement in our communities.

Our comments are organized into the following categories: 1) Positive aspects of the draft rules, 2) Environmental and land use concerns, 3) Siting and neighborhood impacts, 4) Preventing youth access, 5) Ensuring product and public safety and protecting public health and safety, 6) Clarifying applicant responsibilities, and 7) Other concerns, including clarifying license application timelines and local government responsibilities.

Positive Aspects of the Rules

We commend the Washington State Liquor Control Board for its thorough effort to address all key requirements of I-502 and a clear and effective regulatory framework. Overall, there are many elements of the draft rules that we support and believe will be an effective regulatory framework for this newly legal product. These include:

- New Section. WAC 314-55-105 Packaging and labeling requirements – Requiring products to be sold behind the counter is an excellent provision that will reduce the risk of theft and the availability to children and youth.
- New Section. WAC 314-55-015 General information about marijuana licenses – Requiring employees to be 21 years or older further advances the youth prevention aspects of the law.
- New Section. WAC 314-55-083 What are the security requirements for a marijuana licensee? The security requirements (Display of ID badge, alarm and surveillance systems) are excellent – both in protecting public safety and in preventing youth access.
- New Section. WAC 314-55-155 Advertising - These provisions are excellent in helping to prevent youth access.
- New Section. WAC 314-55-105 Packaging and labeling requirements - We concur with this section’s language requiring marijuana sold at retail to include warning materials. We note that subsection (8)(h) reasonably requires retailers to furnish a warning disclosing information about extraction methods and any chemicals used in the process.

Environmental and Land Use Concerns

King County is concerned about the potential environmental impacts of production and processing of marijuana for sale, particularly the potential for large energy consumption in indoor grow operations. We are also concerned about marijuana waste byproduct from all types of marijuana operations.

- **Permit Outdoor Grow Operations and Implement Preferential Licensing.** With proper security measures, outdoor growing operations are preferable because they would use much less energy. Outdoor grow operations will also have a lower barrier for entry into the marketplace. We recommend that the Board allow outdoor growing as an option.
- **Incentivize Environmentally Sustainable Grow Operations.** For any growing operations, we recommend that the Board implement an incentive system to encourage licensed growers to follow best practices for environmental protection and energy conservation. The incentive system would favor license applicants that demonstrate in their business operation plan that they will minimize energy use, use rain or reclaimed water, compost plant waste, and minimize agricultural chemical uses.
- **Non-useable portions of the marijuana plant should be considered agricultural byproduct in producer operations.** For producer operations, clarifying in New Section, WAC 314-55-097 that the non-useable part of the marijuana plant can be an agricultural byproduct and can be mulched or treated as a beneficial use on-site is consistent with how other agricultural operations treat agricultural byproducts and is consistent with sustainable farming practices. Use or disposal of agricultural byproducts that are not part of the useable marijuana plant would need to be consistent with other state and local laws as noted. The current language in New Section, WAC 314-55-097 is unclear with respect

to large-scale composting on-site and also would not allow for use in biofuel production. The rules should be revised to clearly allow both of these practices.

- **Require producers, processors and retailers to adequately characterize waste generated according to Washington State’s Dangerous Waste Regulations, Chapter 173-303 WAC.** New Section, WAC 314-55-097 appropriately requires compliance with applicable storage and disposal requirements under state and local regulations. We concur with this language. However, we request clarification by specifying that adequate characterization of waste must take place. If any of the marijuana waste material designates as something other than dangerous waste, then the solid waste handling standards of Chapter 173-350 WAC would govern disposal of the non-dangerous waste. In addition, for liquid waste, the King County industrial Waste Program and other local sewer districts administer regulations that are designed to prevent businesses from discharging substances that can degrade the wastewater treatment process, harm workers or facilities, or impact water quality.
- **Include retail in requirements for waste disposal.** New Section, WAC 314-55-097 addresses waste disposal by producers and processors. Retailers may also have useable product to dispose that is expired or unsold. Retailers should be clearly included in waste disposal requirements to ensure that waste is adequately characterized, disposal is in compliance with state and local regulations, and rendered un-useable through similar disposal processes.

Siting and Neighborhood Impacts

As noted in our April 4, 2013 comment letter on the preliminary draft producer rules (CR 101), King County is concerned about a number of definitions in the initiative and the rules. The proposed definitions in New Section, WAC 314-55-010 regarding youth-serving organizations do not provide sufficient clarity to applicants, the public or local governments. They may also unnecessarily restrict siting.

King County is concerned that by defining these terms too broadly, the Board will force nearly all of the licensed activity into rural and urban unincorporated areas that do not have the infrastructure to support the potential level of activity that might be expected.

This could lead to impacts to the county transportation system. In addition, in King and most other counties, rural areas are provided rural-level policing. If there are potential public safety concerns, rural areas may be the least able to address ‘clustering’ of marijuana-related businesses that could result from overly broad definitions.

The term “property line” could refer to the boundaries of a property created through some legal mechanism, such as a subdivision or binding site plan, or just an area on a property that does not have particular legal significance, e.g. the area that encloses a building. If the intent is that the

term refers to an entire property, a term of art, such as “parcel” or “legal lot”¹ should be used. If the intent is to refer to an area less than the entire property, the definition should avoid using the term “property line.” King County sees several problems with using the parcel boundary as the definition of “perimeter.” In counties, parcel sizes may range up to 80 or 160 acres. If the parcel boundary defines the perimeter for purposes of calculating distances, significant areas of the county could be made unavailable for licensed activities. This may be less of an issue in urban areas, where property sizes are generally smaller. There may be some benefit in considering whether different rules should apply to the different types of licensed activities. The need to restrict youth access to marijuana is more imperative in retail operations than in the production and processing end of the business.

In addition, we propose the following language changes for the specific definition sections related to youth to accomplish more effectively the objective of preventing youth access while avoiding clustering, particularly of retail facilities:

WAC	Current language	Proposed change	Rationale/explanation
NEW Section. WAC 314-55-101 Definitions	(3) “Child Care Center” means a licensed educational environment with curriculum usually associated with preschools.	(3) "Child care center" means <u>the same as a "child day care center" or a facility providing regularly scheduled care for a group of children one month of age through twelve years of age for periods less than twenty-four hours.</u> (WAC 170-295-0010)	Public Health advocates are primarily concerned with preventing youth access for kids of school age. The new definition changes the scope of facilities to include both children 0-5 and school-aged kids by adopting the current WAC definition of child care.
NEW Section. WAC 314-55-101 Definitions	(6) “Game Arcade” means an entertainment venue featuring primarily video games, simulators, and/or other amusement devices.	(6) “Game Arcade” means an entertainment venue featuring primarily video games, simulators, and/or other amusement devices. <u>This does not include facilities where the admission to which is restricted to persons aged twenty-one years or older.</u>	By re-iterating the language in I-502, the exemption about places that allow only patrons over age of 21 is clearer.

¹ The rules define the term “lot” in a way that could result in confusion if “legal lot” were used.

WAC	Current language	Proposed change	Rationale/explanation
NEW Section. WAC 314-55-101 Definitions	(7) “Library” means an organized collection of resources made accessible to the public for reference or borrowing.	(7) "Library" means a <u>free public library supported in whole or in part with money derived from taxation.</u>	The proposed change is to mirror language already used elsewhere in state statute (RCW 27.12.010). Also, this narrows the scope of the definition to facilities that are commonly thought of as libraries (i.e. public library) but doesn’t apply to facilities such as church libraries or other private libraries.
NEW Section. WAC 314-55-101 Definitions	(14) “Recreation center or facility” means a supervised center that provides a broad range of activities and events.	(14) “Recreation center or facility” means a supervised center that provides a broad range of activities and events <u>targeted at youth.</u>	By adding the language about targeting youth, the definition is narrowed to focus on youth. Some recreation centers are used exclusively by adults and seniors and a narrower definition is in line with the intention of the initiative’s intent in preventing youth access. This definition also ensures that older youth (12-18) would be addressed through the definitions, if the new definition of child care is adopted.

Preventing Youth Access

Preventing youth from accessing marijuana products is a key part of Initiative 502. In addition to preventing youth access through the overall siting requirements, we believe that several areas of the rules could be strengthened to ensure early on that youth access is restricted through appropriate product restrictions, product composition restrictions, packaging and labeling requirements, educational materials, and assisting retailers to ensure that sales do not occur to minors. The Board has an opportunity to learn lessons from youth access to alcohol and tobacco, and to ensure that a fully functional youth access prevention system is in place at the outset, and basing the new system on best practices with these other products.

- **New Products Should Be Approved by the Board.** Under the Family Smoking Prevention and Tobacco Control Act, new tobacco products must be approved by the Food and Drug Administration. The Board could consider adopting similar regulations for marijuana products.
- **Prohibit combining alcohol, tobacco, controlled substances, or other intoxicating products with marijuana.** Additives intended to entice use by youth, or abuse by adults – such as tobacco or alcohol – should be prohibited. Tobacco is the drug most commonly used by children and adolescents in Washington State. Infusing marijuana into tobacco use could have the result of encouraging and enhancing the overuse of marijuana (due to tendency of cigarette smokers to smoke far more cigarettes per day than a marijuana user would smoke “joints”, and create confusion in enforcement issues (because tobacco is legal for 18-21 year-olds, but recreational marijuana is not). Tobacco

also has known health hazards, much greater in quality and degree than any known for marijuana.

- **Delay packaging, accompanying and educational materials and labeling requirements to establish strong standards.** New Section WAC 314-55-105 is one of the most important provisions in the rules for protecting the public's health and preventing youth access. We encourage the Board to postpone rulemaking for this section to a later date in fall, 2013, so that there is adequate time to convene a group of experts to inform the rulemaking process. We understand the statutory requirement of the Board to move forward with rulemaking, but this particular aspect merits careful consideration and would not impede the process of starting to issue retail and processor licenses in 2014. If this is not possible, we would encourage the Board to consider another round of rulemaking to fully address these standards to ensure adequate protection of public health and safety.

If the Board decides to move forward with rulemaking at this time, we would offer the following comments.

- **Accompanying material described in New Section WAC 314-55-105 sections 7 and 8 should be more clearly defined.** The material should be:
 - Adequately sized (brochure or larger) and use simple language and large fonts that can be translated to languages other than English.

In addition, the accompanying materials should include:

- The phone number for the marijuana use public health hotline and/or the number for the recovery helpline program.
- What is legal/what is not (age, "in view of the public", etc.),
- DUI limits,
- Risks of use while pregnant or breast-feeding,
- THC to CBD content based on scientific evidence,
- Product effects and resultant behavior,
- Potential risks of using the products with other drugs or alcohol
- Suggest consultation with a physician if you take medications.

A state agency, such as the Washington State Department of Health, should produce the material so as to ensure a uniform appearance and a standard format. The materials should also include URLs for relevant state and other websites with educational materials for parents and educators to recognize the signs and behaviors of use. If anything other than plain packaging is allowed, common product packaging should be depicted on the website as educational examples. The website should also include similar information to the accompanying materials.

- **Educational material should be required to be posted at point of sale.** The Board should also consider adding a new rule requiring retail licensees to display educational materials that can be posted (different from the accompanying material) at the point of sale. These materials should be developed by the Board in consultation with health

experts and should include information on the health and safety risks posed by marijuana use among adolescents and adults as well as the phone number for the marijuana use public health hotline and/or the number for the recovery helpline program, and URLs for relevant state and other websites with educational materials for parents and educators. Appropriate information similar to the information in the accompanying materials should be included.

- **Packaging - Rotate & improved format for health and warning language.** Packages should include a rotating health warning rather than just the one health message proposed (“may be habit forming”). These rules should be developed through a later rulemaking process (see comment above) with a body of experts who will rely on evidence-based messages that are effective in preventing youth use and adult chronic use.

In addition, the health warnings on the packages should mirror the format used for health warnings on tobacco products. They should have uniform fonts and sizes and should be surrounded by a border so as to stand out on the packaging.

- *Include child warning label on infused products.* Currently, the rules do not require a child safety warning on the label of infused products (only in the accompanying materials). It is particularly important to include the child safety warning on infused products. The label should say: “Not Safe for Use by Children” or “Not Safe for Children - Keep Out of Reach of Children.” Also see comment on Product Safety – Infused Products.
 - *If marijuana infusion is permitted with potentially hazardous foods, include on label any proper handling/storage requirements.* Currently, the labeling requirements in the draft rules do not require information regarding proper handling/storage (temperature control) of potentially-hazardous foods infused with marijuana products. This should be standard for all labels. Also see comment on Product Safety – Infused Products.
- **Packaging - Plain packaging requirement.** Any useable marijuana or marijuana-infused product should be in a plain outer package. The Board should adopt rules that reasonably restrict the manner in which useable marijuana and marijuana-infused products are packaged to avoid appealing to youth. Such products have obvious appeal to children. Adjacent is a picture of some of the packaging currently available in medical marijuana dispensaries. The products clearly mimic popular candy brands. It should be noted that not all of these packages are infused packages, many are loose leaf but packaged to ‘imitate’ popular candy branding.



- **Packaging - Change pictorial logo to text-based logo.** The proposed logo depicting Washington State with a marijuana leaf is not ideal. This image promotes the idea that our state endorses marijuana use and legitimizes its use from a youth perspective. We would suggest that the board consider a text based logo instead.

Packaging - Childproof packaging requirement. While section WAC 314-55-105 requires storage of marijuana and marijuana products behind a counter or other barrier to prevent direct customer access, and requires accompanying written material to include a “keep out of reach of children” warning in connection with the age limit of 21, it says nothing about safety when consumed by children and childproof packaging. Marijuana-infused candy or candy-like items have an obvious appeal to children and youth. There is also a real concern that children may mistake these products for actual candy and there have been reports of unintentional ingestion. Plain packaging and child-proof packaging will help to prevent accidental ingestion.

We recommend a subsection be added to this section to require marijuana and marijuana products to be sold in childproof containers or packaging.

- **Requiring point of sale age limit stickers.** The Board should also consider requiring and producing stickers that remind retailers of the year that those who are able to purchase marijuana were born in or earlier like these stickers used for alcohol and tobacco.



We would encourage the Board to re-visit the issue of labeling and packaging in future years to ensure that products are not be labeled or packaged in a way that encourages youth use or chronic users.

Product and Public Safety

Product Safety – Infused Products. Because recreational marijuana of all types (smoked, infused products) is a new product, our approach to commenting on product safety is one of caution, relying on existing scientific evidence and literature about known health effects of marijuana, risks of use by youth, and general knowledge of health and safety risks of preparation of potentially hazardous food (while recognizing that local governments do not currently play a role under I-502 in regulation of food safety for marijuana infused products). To promote product safety, we propose that the Board:

- **Include “Not Safe for Children” on Infused Product Labels.** See our comment under Youth Access, Product Labeling.
- **Prohibit processor licensees from having more than one business at their address.** The Board should prohibit processor licensees from operating any other business at their business address (except for production if a producer/processor licensee). For example, a commercial catering kitchen should not also be where marijuana brownies are processed as there is a risk of cross-contamination.
- **Preparation of marijuana-infused products with potentially hazardous foods should be prohibited.** Due to the risk of preparation of marijuana-infused products with potentially hazardous foods (those needing temperature control), we propose prohibiting these types, in order to ensure food safety. If the Board chooses instead to allow preparation of marijuana infused products:
 - *Include temperature storage requirements on labels if infused potentially hazardous food is permitted.* If the board chooses to allow marijuana infusion with potentially-hazardous foods, labeling should include proper temperature storage requirements. Known potentially hazardous foods in the medical marijuana market include marijuana-infused lasagna, chicken chow-mein, etc.

Public Safety - Risks of Impairment; Risks of Drug Mixing; Fines for Sales to Youth.

We are concerned that mixture of marijuana with other drugs could lead to additional impairment risks or other side effects. Similarly, lack of knowledge about individual metabolic reactions to marijuana at this early stage of legalization will make it challenging for adults legally using the product to understand their own individual response, impairment limits and reactions to different types of products. We are also concerned that a strong signal is sent to retailers selling to youth by setting adequate penalties.

- **Prohibit sales to anyone under the influence of marijuana, alcohol or other drugs.** The Board should consider the feasibility of regulations that prohibit sales of marijuana to anyone under the influence of marijuana, alcohol or other drugs. The Board currently has provisions of this kind for alcohol and should look to those provisions in creating similar rules for marijuana. By prohibiting sales to anyone intoxicated, the Board will be

limiting the burden on law enforcement and decreasing the likelihood of public safety issues such as driving while impaired.

- **Ensure that labels, signage and accompanying materials suggest consultation with a physician if purchasers are also utilizing other medications.** See comment in Preventing Youth Access.
- **Clarify product THC concentrations and serving size limits to the extent possible.** The rules are currently unclear regarding serving size limits in some instances, relationship to impairment standards, and THC concentrations. See comments under the following section, Other Concerns, regarding these topics.
- **Add monetary fines for second violations of sales to minors.** The fines and consequences for Group 1 violations against public in New Section, WAC 314-55-520 are generally excellent. To decrease the likelihood of sales to youth, we propose strengthening the section by adding a monetary penalty for second violations for sales to a minor. This would send a strong signal to retailers about the seriousness of this violation.

Clarifying Applicant Responsibilities

- **Require applicants to prove that they meet 1,000 foot limit and local zoning requirements.** Under the draft proposed rules, applicants are not required to demonstrate to the Board that they have met the 1,000 foot buffer, nor that the proposed location is consistent with local zoning. To address these problems, the Board should use a process similar to the one it uses for liquor licensing. Under that process, the applicant would be responsible for providing information to the Board demonstrating that it complies with the Initiative's requirements to locate away from youth-serving facilities and also that the proposed location is consistent with local zoning. This approach will reduce the burden on the Board and on local governments and reduce the risk of administrative appeals that are likely if the Board approves licenses for locations that are not consistent with local zoning. The Board should amend New Section, WAC 314-55-020 to place the burden of proof for demonstrating compliance with these requirements on an applicant and to require the applicant to provide maps or other relevant documentation supporting its application. The rule should also clearly state that the Board has the responsibility for making the final determination of whether an applicant meets the 1000 foot rule.

WAC	Current language	Proposed change	Rationale/explanation
New Section. WAC 314-55-020. Marijuana license qualifications and application process.	As part of the application process, each applicant must submit in a format supplied by the Board an operating plan detailing the following as it pertains to the license type being sought. This operating plan must also include a floor plan or a site plan drawn to scale which illustrates the entire operation being proposed.	As part of the application process, each applicant must submit in a format supplied by the Board an operating plan detailing the following as it pertains to the license type being sought. This operating plan must also include a floor plan or a site plan drawn to scale which illustrates the entire operation being proposed; <u>a site map showing local zoning and any uses within 1000 feet of the perimeter that would preclude locating the facility at that site; and documentation demonstrating that the licensed activity is permitted under local zoning codes at that location.</u>	Including language in the rules that signifies the responsibility of the applicant to research and understand the applicable local zoning, regulatory and other requirements will limit applications from unqualified businesses, limit the burden on local governments to comment on these applications, and limit complaints and comments from the public.

Other Concerns

- Clarify legality of hashish and hash oil.** Hashish and hash oil are marijuana products under I-502. For the Board to treat hashish and hash oil consistently with the intent and language of the Initiative, hashish and hash oil need to be included in the rules within the definitions of either “useable marijuana” or an “infused product.” Failure to do this, as proposed under 314-55-079(2), will leave a group of marijuana products out of the legal recreational market and licensing structure, thereby undermining the policy goals of the initiative, including a negative impact on revenue and maintaining hashish and hash oil within the black market.

Physically, there is nothing distinguishable between hashish and hash oil from other “infused products,” which by various production techniques, increase the concentration level of active THC. The more consistent interpretation and application of I-502 is to treat hashish and hash oil as “infused products” in their original, unadulterated form, and thereby subject to the “serving size” limits based on concentration of THC. The higher concentration of THC in these substances would thereby limit the amount of this product sold. Given that the statute itself (i.e. I-502) has precedence over any interpretation in

the LCB regulations, this is the stage where the regulations need to be consistent with the legislation.

- **Clarify Serving Size v. Transaction Limits for Infused Products.** New Section, WAC 314-55-095 is also somewhat unclear on the relationship between serving sizes of “infused products” (subsection 2) and the transaction limitation (subsection 3). Subsection 2 limits a single infused product to ten servings or one hundred milligrams THC (a serving size is defined in terms of concentration of THC for infused products). Subsection 3, however, appears to limit the single transaction of an infused product by total weight of the product (not by reference to number of servings or concentration). If the LCB intends that no transaction for infused products would exceed one hundred milligrams THC, then it needs to be clear that this is the intent, even if the product gross weight is less than the transaction limit in subsection 3. The only other interpretation of this could be that a single “packaged” infused product is limited to the 100 milligram limit, per subsection 2, but that a retail purchaser could purchase as many of these packages as total up to the overall gross weight set forth in the transaction limits of subsection 3. If this is the intent, then the rules should be clear so that retailers and the purchasers understand how sales will occur.
- **Clarify THC concentration and serving size limits for “useable marijuana.”** The rules address THC concentration and serving size limits for infused products, but not “useable marijuana.” Because serving sizes (infused products) are based on THC concentration in the product, the Board must set THC concentration limits. In order to then set serving size limits for “useable marijuana.”
- **Create a responsible vendor program.** The Board should create a mandatory responsible vendor program similar to the current alcohol Responsible Vendor Program. This type of program is a cost-effective way to encourage responsible practices by licensed marijuana retailers.
- **Tax by THC concentration rather than weight to limit chronic use.** The draft rules propose to impose taxes based on weight of product sold – i.e. no variation in “usable marijuana” (and possibly, “infused products”) for higher concentration of THC. We propose that taxation be by THC concentration rather than weight. Estimates by the WSLCB’s own consultant demonstrate that because costs of production are relatively similar regardless of THC concentration, higher concentration products should be taxed at a higher rate, if the policy objective is to avoid over use of higher concentrations. Without this graduated taxing system, more highly concentrated products may be increasingly favored, due to their THC effects, resulting in a market place increasingly skewed towards addictive behaviors/chronic use.
- **Pursue a legislative solution to medical marijuana system.** While we understand that the Board is not addressing integration of the medical marijuana regulatory framework with these recreational marijuana rules, we remain concerned that the objectives of I-502 will not be met without legislative action in the near future to address the medical

marijuana given the many important public health and public safety issues that are not being addressed in the medical marijuana market.

- **Create realistic timeline and clarify process for public and local government response to license applications.** We are concerned that the Board's current timeline (30 day window) for license applications may be problematic for several reasons:
 - Because local law enforcement typically provides finger-printing services, a 30-day window (as specified under New Section, WAC 314-55-081) will be insufficient to finger print all applicants, as required by the RCW,
 - Because initial applicants and subsequent renewals will occur at the same time in the calendar year each year, identifying a period when local governments have sufficient staff capacity to review applications is critical. Ideally, this would occur after the first of the calendar year (not beginning in early December).

Further, It is unclear what the level of evidence is and who can file complaints regarding current licensees, including who is responsible for taking complaints. This process needs to be clarified to ensure that the public and local governments understand the process.

As a local government, we hope to work closely with the Washington State Liquor Control Board as a partner to ensure that businesses are operating in a legal manner, and to ensure clear roles and responsibilities between the state and our local government agencies. While these are operational rather than rulemaking issues, clarification in the rules will help to establish clarity in this partnership at the outset.

Thank you for the opportunity to comment on the preliminary proposed rules for producer, processor and retailer licenses. Please do not hesitate to contact us if you have any questions regarding our comments.

Sincerely,



Laura Hitchcock, JD
Coordinator, King County Inter-branch Team on Cannabis Legalization

401 5th Avenue
CNK-1300
Seattle, WA 98104

206.236.8760
laura.hitchcock@kingcounty.gov