



## SUPPLEMENTAL AGENDA STAFF REPORT

### AGENDA LOCATION: Action Item #11-A

**MEETING DATE:** June 27, 2016

**TO:** Honorable Mayor and City Council

**FROM:** Gene Parker, City Attorney  
Richard Gassman, Planning Director

**ISSUE:** Continued deliberation for General Ordinance No. 16-1343, concerning proposed time, place and manner regulations of facilities for processing, production, retailing and wholesaling of marijuana

**BACKGROUND:** The City Council requested additional information as to the location of licensed day care facilities and maps which would show potential buffer zones around recreational marijuana facilities at distances of 500 and 750 feet for the day care facilities and established churches. The Council also requested additional information related to the possible definition of an established church.

#### Information Related to Day Care Facilities

Enclosed with this supplemental staff report is a list of child care facilities registered with the Early Learning Division of the State of Oregon. This list is identified as Attachment #6. Also enclosed are three maps, identified as Map #5, Map #6, and Map #7, which show a buffer zone for licensed day facilities and churches at distances of 500 feet, 750 feet, and 1000 feet from a recreational marijuana facility. The buffer zone of 500 feet shown on Map #5 would include all of the child care facilities listed on Attachment #6, with the exception of the facility known as Kids Club-Waters Edge, located at 551 Lone Pine Boulevard. Map #7 shows the location of a 1,000 foot buffer which would include the facility at the Water's Edge property.

With the exception of the facility located at the Water's Edge property, the exiting child

care facilities listed on Attachment #6 are already included in the residential buffer zones which prohibit recreational marijuana facilities from being located within 500 feet of designated residential zones. Including these facilities within a 1000 foot buffer zone offers no additional protection for these facilities. The practical effect of including the facilities in a proposed 1,000 foot buffer zone is that it would eliminate another area in the City where a recreational marijuana facility could be located.

### Definition of “Established Church”

During its research, staff was able to find two other definitions related to a “church”: the first one listed below is from the City of Keizer, and the second is from Wasco County’s Zoning Ordinance:

“House of Worship”: A church, synagogue, temple, mosque, or other permanently located building primarily used for religious worship. A house of worship may also include accessory buildings used for related religious activities and a residence.

“Church” – A building, together with its accessory buildings and uses, where persons regularly assemble for public worship, and which building, together with its accessory buildings and uses, is maintained and controlled by a religious body organized to sustain public worship.

The definition from the City of Keizer is very similar to the City’s existing definition of a church which is “A permanently located, fully enclosed building primarily used for religious worship”.

As noted in the June 13, 2016 staff report, there are unresolved issues as to whether the Salvation Army facility would qualify as an established church. It is unclear if the term “building” would include the entire building which includes a thrift store, which would not appear to involve public worship activities, or whether the portion of the building which is used for worship activities would constitute a separate building. If the City were to consider a definition similar to the one used by Wasco County, there would still be unresolved issues as to whether the thrift store part of the building would be considered an accessory use or building which is used for the regular assembly of public worship, or whether the Salvation Army qualifies as a “religious body organized to sustain public worship”. The dilemma appears that no matter what definition is used to define the term “church”, it is unclear whether the Salvation Army building would fit within the definition of a church, and there is a strong likelihood that a legal challenge would be raised if the City determined that the Salvation Army did fit within the definition of a church.

### Analysis of Potential Concerns

State law allows the City to consider the adoption of reasonable time, place, and manner regulations related to facilities for the processing, production, retailing and wholesaling of marijuana. Unfortunately the state law provides very little guidance as to what constitutes a “reasonable” regulation of these types of facilities.

For the following reasons, it is staff's recommendation that the City Council not include licensed day care facilities and established churches within the 1000 foot buffer zone proposed by the Planning Commission:

1. As noted above, attempting to apply a definition of an established church to the Salvation Army building would likely result in a legal challenge to the adoption of any buffer zone including the Salvation Army in such a buffer zone, and to any determination by the City that the Salvation Army facility meets the definition of an established church.
2. With the exception of the one child care facility located at the Water's Edge facility, the existing child care facilities are already protected by the 500 foot residential buffer areas. The only actual impact of including the child care facilities in a proposed 1,000 buffer area would be to eliminate an additional area where a recreational marijuana facility could be located.
3. The inclusion of day care facilities and established churches with a proposed 1,000 foot buffer area would have the effect of prohibiting retail marijuana facilities from being able to locate within a significant portion of the City. The area of potential locations for these facilities, as shown on Map #7, includes many properties which are already developed. If the practical effect of the proposed 1,000 buffer zone for the day care facilities and established churches is that persons seeking to establish a recreational marijuana facility cannot find a site for their proposed business, within the limited area where such facilities would be allowed, a legal challenge could be raised that the City's regulations have effectively resulted in a ban upon the operation of these types of facilities, and that such a regulation is not reasonable.
4. The proposed restrictions in the ordinance related to schools, a public library, and public parks and facilities, which are attended or used by minor children, reflects a clear intent to protect minor children from activities associated with the sale of retail marijuana. Staff does not believe there is sufficient evidence in the record to justify that inclusion of churches within the proposed 1,000 foot buffer zone is necessary for the protection of minor children.

**BUDGET IMPLICATIONS:** As noted in the previous staff report, a proposed ordinance to refer a measure to the voters establishing a three percent tax on the retail sale of marijuana is scheduled for review and adoption at the June 27<sup>th</sup> Council meeting.

**COUNCIL ALTERNATIVES:**

1. *Staff recommendation:* The City Council determine not to include the Planning Commission's recommendation for the proposed buffer zone of 1000 feet for licensed day care facilities and established churches in the final version of proposed General Ordinance No. 16-1343.
2. *Alternative:* If the Council desires to include licensed day care facilities and established churches within the proposed 1,000 foot buffer zone, direct staff to

include the following modifications to be made to General Ordinance No. 16-1343:

- A. Revise all references in the proposed ordinance to buffer zones for licensed daycare facilities and established churches to read as follows:

A certified family care center, a child care center, or family child care home, registered with the Early Learning Division of the State of Oregon, existing as of the effective date of a license issued by the Oregon Liquor Control Commission for the recreational facility.

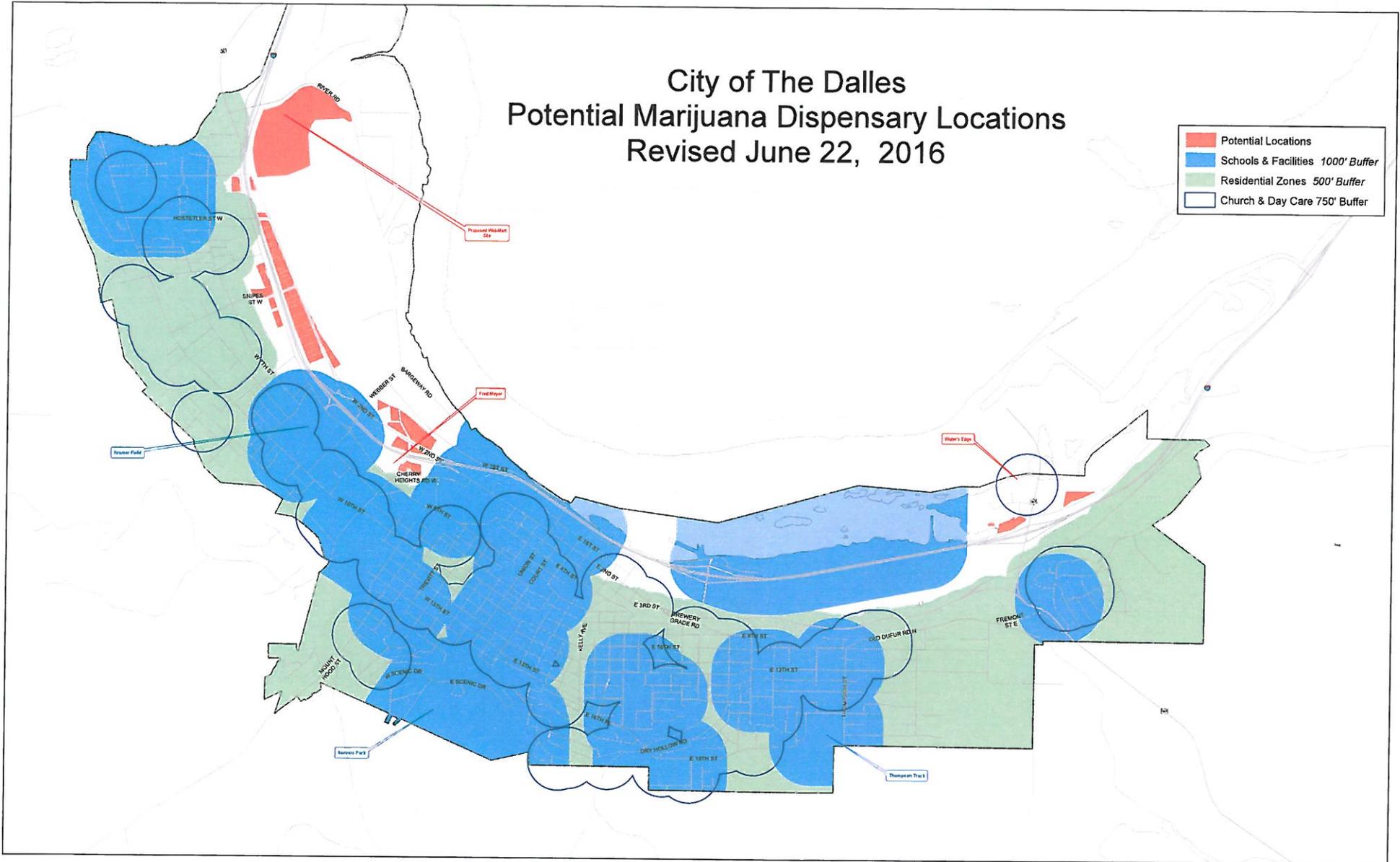
An established church, including church schools, existing as of the effective date of a license issued by the Oregon Liquor Control Commission for the recreational facility. (Note: the existing definition of church in the City's LUDO would not be changed).



# Map #6

## City of The Dalles Potential Marijuana Dispensary Locations Revised June 22, 2016

- Potential Locations
- Schools & Facilities 1000' Buffer
- Residential Zones 500' Buffer
- Church & Day Care 750' Buffer





## Attachment #6

License No	Facility Type	Facility Name	Facility Address	FA City	FA State	FA Zip
CF502656	Certified Family Child Care	Adore Lil Steps Childcare	2006 Garrison St	The Dalles	OR	97058
CF501353	Certified Family Child Care	Eiesland's Child Care	2327 W 14th St	The Dalles	OR	97058
CF501763	Certified Family Child Care	Flutter-By Kids	3012 W 10th St Apt 1	The Dalles	OR	97058
CF502012	Certified Family Child Care	Little Steps	758 Richland Ct	The Dalles	OR	97058
CF502411	Certified Family Child Care	Playful Learning	516 W 13th St	The Dalles	OR	97058
CC000372	Child Care Center	Great'n Small Child Development Center	1719 E 19th St	The Dalles	OR	97058
CC002077	Child Care Center	Great'n Small-ST PAUL	1805 MINNESOTA ST	THE DALLES	OR	97058
CC502991	Child Care Center	Kids Club-Water's Edge	551 Lone Pine Blvd	The Dalles	OR	97058
CC502825	Child Care Center	Mid-Columbia Children's Council - Maupin Head Start	Maupin Grade School	Maupin	OR	97037
CC052230	Child Care Center	OCDC - Peak Harvest Early Childhood Care and Education Center	1112 Cherry Heights Rd	The Dalles	OR	97058
CC052454	Child Care Center	OCDC - The Dalles Early Childhood Care and Education Center	1300 W 9th St	The Dalles	OR	97058
CC052231	Child Care Center	OCDC - The Dalles School-Age Education Program	1314 E 19th ST	The Dalles	OR	97058
CC502938	Child Care Center	Petersburg Head Start	3855 Fifteen Mile Rd	The Dalles	OR	97058
CC001088	Child Care Center	St. Mary's Academy Day Care	1112 Cherry Heights Rd	The Dalles	OR	97058
CC501461	Child Care Center	The Dalles Head Start Center	1717 W 10th St	The Dalles	OR	97058
CC501943	Child Care Center	Wahtonka Early Head Start	3601 W 10th St	The Dalles	OR	97058
RF521235	Family Child Care Home	Barrier, Jorgi Paige	740 E 20th St	The Dalles	OR	97058
RF517747	Family Child Care Home	Berish, Michelle Leah	914 E 12th St	The Dalles	OR	97058
RF523439	Family Child Care Home	Chavers, Rose Fay	804 E 9th St	The Dalles	OR	97058
RF522824	Family Child Care Home	Church, Traci Mae Marie	1510 E 14th St	The Dalles	OR	97058
RF011923	Family Child Care Home	Davis, Julie C	711 W 19th St	The Dalles	OR	97058
RF522816	Family Child Care Home	Emilio, Ruth A A	4910 Lockwood Ave W Apt A	The Dalles	OR	97058
RF056853	Family Child Care Home	Goslin, Laura	1015 E 8th St	The Dalles	OR	97058
RF523295	Family Child Care Home	Grant, Leanna Linn	1512 E 9th St	The Dalles	OR	97058
RF036163	Family Child Care Home	Greiman, Sharon Diane	612 W 7th PL	The Dalles	OR	97058
RF057891	Family Child Care Home	Hays, Tammy Kay	1410 E 13th Pl	The Dalles	OR	97058
RF521343	Family Child Care Home	Hernandez, Evangelina	515 E 9th St	The Dalles	OR	97058
RF033278	Family Child Care Home	Keys, Carol Ann	485 Main St	Dufur	OR	97021
RF517506	Family Child Care Home	Lee, Shannon Christine	2215 E 12th St	The Dalles	OR	97058
RF036004	Family Child Care Home	Linder, Shawn Marie	805 E 20th St	The Dalles	OR	97058
RF521835	Family Child Care Home	Loomis Pulido, Schlee Crystina	301 W 13th St	The Dalles	OR	97058
RF521324	Family Child Care Home	Marquez, Diocelina	2428 Old Dufur Rd	The Dalles	OR	97058
RF522071	Family Child Care Home	Martinez, Alma Margarita	1628 E 13th Pl	The Dalles	OR	97058
RF058667	Family Child Care Home	Nails, Shaunna Lee	930 E 19th St	The Dalles	OR	97058
RF523165	Family Child Care Home	Nunez, Ana L	708 E 15th St	The Dalles	OR	97058
RF520559	Family Child Care Home	Parnell, Andreanna	2319 E 13th St	The Dalles	OR	97058
RF024398	Family Child Care Home	Patterson, Debra Kaye	700 W 12th St	The Dalles	OR	97058
RF520583	Family Child Care Home	Penturf, Cindy Marie	851 Garden Ct	The Dalles	OR	97058
RF055545	Family Child Care Home	Proffitt, Brenda Marie	223 E 13th St	The Dalles	OR	97058
RF523260	Family Child Care Home	Rivera, Ana L	1910 E 12th St	The Dalles	OR	97058
RF521494	Family Child Care Home	Rodriguez, Luz Maria	1201 E 17th St	The Dalles	OR	97058
RF056333	Family Child Care Home	Vassar, Kristina Marie	319 E 13th St	The Dalles	OR	97058
RF521303	Family Child Care Home	Wingo, Eustolia Casas	1108 Starlight Dr W	The Dalles	OR	97058
RF013641	Family Child Care Home	Wondercheck, Jinx Andrea	1205 Verdant St	The Dalles	OR	97058
RF521623	Family Child Care Home	Yates, Karolyn Gail	2015 Lewis St	The Dalles	OR	97058