



# Community Development Department

Planning Division Building Safety Division Environmental Soils Division

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## MEMORANDUM

**DATE:** September 16, 2015

**TO:** Board of County Commissioners

**FROM:** Matthew Martin, Associate Planner  
Nick Lelack, Community Development Director

**RE:** Marijuana Related Business Land Use / Zoning Decisions Continued

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### PURPOSE

The purpose of this memorandum is to assist the Board of County Commissioners (Board) in providing direction on the following potential text amendments to Deschutes County Code, including a timeline:

- I. Permissible Uses:  
Identify zones or geographic areas where marijuana business may be permitted or prohibited, including whether home occupations for marijuana businesses should be allowed.
- II. Reasonable Regulations:  
Draft reasonable time, place, and manner regulations for marijuana related businesses.
- III. Draft Timeline:  
Review the draft schedule to prepare, process, and adopt amendments to County Code.

### SUMMARY

At the work session on September 2, 2015, the Board did not “opt out” of any marijuana related businesses at this time as allowed by HB 3400. Instead, the Board decided to work with staff to propose regulations addressing marijuana businesses, and to begin the process immediately.

#### I. Permissible Uses

The County is responsible for regulating land uses, including those related to recreational and medical marijuana, pursuant to the Deschutes County Code (DCC). Marijuana production, processing and sale are no different than any other land use when it comes to administering the zoning ordinance. As with other land uses, the appropriate zoning district(s) to locate these businesses will be based on characteristics of the business (growing, processing, wholesaling, retailing or a combination thereof).

House Bill (HB) 3400 identifies the following six (6) marijuana related businesses that require registration or licensing by the Oregon Liquor Control Commission (OLCC) prior to being established:

- Medical Marijuana Processing Site
- Medical Marijuana Dispensaries
- Recreational Marijuana Producers (Growers)
- Recreational Marijuana Processors
- Recreational Marijuana Wholesalers
- Recreational Marijuana Retailers

Please note that HB 3400 identifies which business types/land uses are permitted in the EFU zone and which are not. Specifically, medical and recreational marijuana processing is outright permitted in the EFU zone unless the County opts out of these businesses.<sup>1</sup> Recreational marijuana production (grow) is outright permitted as a farm use. HB 3400 prohibits farms stands and commercial activities in the EFU zone, meaning retail sales are not allowed.

The Board will need to decide if and how to allow a business type/land use in each zone:

- **Permitted use:** The business type/land use is approved, approved with conditions, or denied subject to compliance with clear and objective standards (Site Plan Review or an Administrative Determination may be required); or
- **Conditional Use:** The business type/land use is approved, approved with conditions, or denied subject to compliance with compatibility standards (DCC 18.128.015) and other applicable standards; or
- **Prohibit:** The use in the zone is disallowed.

For your information, Staff has prepared a series of tables that identify the marijuana related business and the zones were such a use would be allowed under the current standards of the DCC, either permitted outright or as a conditional use. If a zone is not included on the table then the related use is prohibited. Also included are comments that provide addition information. The tables included are:

- Table 1 – Dispensaries and Retail
- Table 2 – Processing
- Table 3 – Recreational Production
- Table 4 – Recreational Wholesaling

### **Home Occupations:**

Outside of the standard use categories, home occupations are a unique type of commercial use that warrants attention. A home occupation is an occupation or profession carried on within a dwelling and/or a residential accessory structure by a resident of the dwelling or employees and is secondary to the residential use of the dwelling and/or the residential accessory structure.

Some marijuana businesses (i.e., small processing) might be permitted as a home occupation under current standards. The tables do not list home occupations because home occupations are permitted in all zones.

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<sup>1</sup> Processing facilities require a land use permit in the EFU zone under Deschutes County Code 18.16.025(l).

**BOARD DIRECTION:** Staff seeks direction from the Board on:

1. In what zones and/or geographic areas will be proposed to permit marijuana businesses, either outright or conditionally, or to prohibit?
2. Should marijuana businesses be proposed to be permitted as home occupations and, if yes, should they be limited to specific businesses, zones, standards, etc. (to be discussed at a subsequent work session).

## **II. Reasonable Regulations**

The provisions of HB 3400, Sections 33, 34, and 89 provide an opportunity for the County to establish “reasonable regulations” addressing the time, place and manner characteristics of marijuana related uses. Compliance with “reasonable regulations” must be demonstrated by the applicant prior to the issuance of a Land Use Compatibility Statement (LUCS). These regulations can apply to outright permitted uses or conditional uses.

The attached Table 5 contemplates time, place, and manner regulation of marijuana related business. The criteria and standards included are provided as starting points for the Board to consider and comment. These criteria and standards have been identified by Staff through review of adopted ordinances in Washington (see attached) and comments received locally.

**BOARD DIRECTION:** Staff seeks direction for the Board on these initial uses standards including recommendations for retention, refinement, or elimination.

## **III. Draft Timeline**

The OLCC will begin accepting applications for marijuana business licenses on January 4, 2015. To have regulations in place by that date the timeframe for development, review, and adoption of the regulations is very limited. Below is a tentative schedule:

9/21	BOCC Work Session
9/28	BOCC Work Session
9/30	BOCC Work Session
10/1	DLCD 35-Day notice prior to first evidentiary public hearing
10/22	Planning Commission (PC) Work Session
11/5	PC Public Hearing (special meeting)
11/12	PC continued Public Hearing (if necessary), Deliberation and Recommendation
11/30	BOCC Work Session (if necessary)
12/2	BOCC Public Hearing
12/9	Written Record Closes
12/14	BOCC Deliberations and direction to staff on final ordinance
12/16 or 12/21	BOCC Adoption by Emergency

Attachments: Tables 1-5

Ordinance from Cowlitz County  
Ordinance from Whatom County

**TABLE 1. DISPENSARIES AND RETAIL**

Zone	Permitted (P) Conditional Use (CU)		Comments
	Dispensaries	Retail	
<b>TITLE 18</b>			
Multiple Use Agricultural-10		CU	<ul style="list-style-type: none"> <li>Commercial Activity in Conjunction with a Farm Use</li> </ul>
Destination Resort		Possibly	<ul style="list-style-type: none"> <li>If proposed as part of DR</li> </ul>
Rural Industrial	P		
<b>UUC - SUNRIVER</b>			
Commercial	P	P	
Town Center	P	P	
Business Park	P	P	
Flood Plain Combining	*	*	<ul style="list-style-type: none"> <li>Subject to underlying zoning</li> </ul>
<b>RURAL COMMERCIAL</b>			
Deschutes Junction and Deschutes River Woods Store	P	P	
Spring River	P	P	
Pine Forest and Rosland	P	P	
<b>RURAL SERVICE CENTER - UC</b>			
Brothers, Hampton, Millican, Whistlestop, Wildhunt	P	P	
Alfalfa RSC - Commercial Mixed Use District	P	P	
<b>TUMALO RURAL COMMUNITY</b>			
Commercial	P	P	
Industrial	P		
<b>TERREBONNE RURAL COMMUNITY</b>			
Commercial	P	P	
Commercial Rural	P	P	
<b>TITLE 19 - BEND</b>			
Not Allowed			
<b>TITLE 20 - REDMOND</b>			
Urban Holding-10		P	<ul style="list-style-type: none"> <li>Farm stand</li> <li>Comm. activity with farm use</li> </ul>
<b>TITLE 21 - SISTERS</b>			
Not Allowed			

**TABLE 2. MEDIAL AND RECREATIONAL PROCESSING**

Zone	Permitted (P) Conditional Use (CU)	Comments
<b>TITLE 18 – DESCHUTES COUNTY</b>		
Exclusive Farm Use	P	<ul style="list-style-type: none"> <li>• DCC 18.16.025(I): Facility for the processing of farm crops...</li> </ul>
Multiple Use Agricultural-10	CU	<ul style="list-style-type: none"> <li>• Commercial activity in conjunction with a farm use</li> </ul>
Rural Industrial	P CU	<ul style="list-style-type: none"> <li>• P or CU depends on location and proximity to residential use or zone</li> </ul>
<b>UUC - SUNRIVER</b>		
Business Park	P	<ul style="list-style-type: none"> <li>• Includes manufacturing of food products</li> </ul>
Flood Plain Combining	*	<ul style="list-style-type: none"> <li>• Subject to underlying zoning</li> </ul>
<b>TUMALO RURAL COMMUNITY</b>		
Commercial	CU	<ul style="list-style-type: none"> <li>• Manufacturing/Production</li> </ul>
Industrial	P	
<b>TERREBONNE RURAL COMMUNITY</b>		
Commercial	CU	<ul style="list-style-type: none"> <li>• Manufacturing/Production</li> </ul>
Commercial Rural	CU	<ul style="list-style-type: none"> <li>• Manufacturing/Production</li> </ul>
<b>TITLE 19 - BEND</b>		
Not Allowed		
<b>TITLE 20 - REDMOND</b>		
Not Allowed		
<b>TITLE 21 - SISTERS</b>		
Not Allowed		

**TABLE 3. RECREATIONAL PRODUCTION**

Zone	Permitted (P) Conditional Use (CU)	Comments
<b>TITLE 18 – DESCHUTES COUNTY</b>		
Exclusive Farm Use	P	
Forest Use	P	
Rural Residential-10	P	
Multiple Use Agricultural-10	P	
Surface Mining	P	
Open Space and Conservation	P	
Rural Industrial	P	
<b>UUC - SUNRIVER</b>		
Airport	P	
Forest	P	
Flood Plain Combining	*	<ul style="list-style-type: none"> <li>• Subject to underlying zoning</li> </ul>
<b>RURAL COMMERCIAL</b>		
Deschutes Junction and Deschutes River Woods Store	P	
<b>RURAL SERVICE CENTER - UC</b>		
Brothers, Hampton, Millican, Whistlestop, Wildhunt	P	
Alfalfa RSC - Commercial Mixed Use District	P	
Alfalfa Residential District	P	
Open Space District	P	
<b>TUMALO RURAL COMMUNITY</b>		
Residential	P	
Residential 5-acre Minimum	P	
Research and Development	P	
<b>TERREBONNE RURAL COMMUNITY</b>		
Residential District	P	
Residential 5-acre Minimum	P	
Airport Development	P	
<b>TITLE 19 - BEND</b>		
Urban Area Reserve	P	
Residential Suburban Low Density	P	
Residential Urban Standard Density	P	
<b>TITLE 20 - REDMOND</b>		
Urban Holding-10	P	
<b>TITLE 21 - SISTERS</b>		
Urban Area Reserve	P	

**TABLE 4. RECREATIONAL WHOLESALING**

Zone	Permitted (P) Conditional Use (CU)	Comments
<b>TITLE 18 – DESCHUTES COUNTY</b>		
<b>UUC - SUNRIVER</b>		
Commercial	P	• Office only
Town Center	P	
Business Park	P CU	• P - office only • CU - warehouse
Flood Plain Combining	*	• Subject to underlying zoning
<b>RURAL COMMERCIAL</b>		
Pine Forest and Rosland	P	• Office only
<b>RURAL SERVICE CENTER - UC</b>		
Brothers, Hampton, Millican, Whistlestop, Wildhunt	P	• Office only
Alfalfa RSC - Commercial Mixed Use District	P	• Office only
<b>TUMALO RURAL COMMUNITY</b>		
Commercial	P CU	• P - office only • CU - warehouse
<b>TERREBONNE RURAL COMMUNITY</b>		
Commercial	P CU	• P - office only • CU - warehouse
Commercial Rural	P CU	• P - office only • CU - warehouse
<b>TITLE 19 - BEND</b>		
Not Allowed		
<b>TITLE 20 - REDMOND</b>		
Not Allowed		
<b>TITLE 21 - SISTERS</b>		
Not Allowed		

**TABLE 5. MARIJUANA BUSINESS “REASONABLE REGULATION” DECISION MAKING MATRIX**

**Disclaimer:** The draft regulations are for discussion purposes only. They are based on examples from other counties’. An “X” represents potential placeholder values where the Board might want to propose standards.

	Medical Marijuana Dispensaries (Adopted)	Recreational Marijuana Retailers	Marijuana Processing	Marijuana Production	Recreational Marijuana Wholesaling
<b>TIME</b>					
Hours of Operation	10:00am-7:00pm	8:00am-9pm (draft OLCC rule)			
<b>PLACE</b>					
Zones/Geographic Area	See Table 1 for Reference	See Table 1 for Reference	See Table 2 for Reference	See Table 3 for Reference	See Table 4 for Reference
Minimum Lot Size			<ul style="list-style-type: none"> <li>EFU/F-1/F-2: X minimum acres</li> <li>RR-10/MUA-10: X minimum acres</li> <li>Commercial/Industrial: X minimum acres</li> </ul>	<ul style="list-style-type: none"> <li>EFU/F-1/F-2: X minimum acres</li> <li>RR-10/MUA-10: X minimum acres</li> <li>Commercial/Industrial: X minimum acres</li> </ul>	
Site Plan Review	Required	Required Create additional Site Plan Review standards specific to this use?	<ul style="list-style-type: none"> <li>Required if located in Commercial / Industrial.</li> <li>Not Required if farm or ag use in EFU</li> <li>Create additional Site Plan Review standards specific to this use?</li> </ul>	<ul style="list-style-type: none"> <li>Required if located in Commercial / Industrial.</li> <li>Not Required if farm or ag use</li> </ul>	Required
Minimum Setbacks of Buildings and/or Operation			100 feet from property line – example from other counties	100 feet from property line – example from other counties	
Maximum Lot Coverage of operation				<ul style="list-style-type: none"> <li>10% for all buildings.</li> <li>No more than 30,000 sq ft overall area of the operation</li> </ul>	
Minimum Distance Buffer	1,000 ft from school, dispensary, or retail	1,000 ft from school, dispensary, or retail (draft OLCC rule)	<ul style="list-style-type: none"> <li>1,000 ft from school</li> <li>300 ft from existing residence not on the property; may be waived by residence owner – example from a State of Washington county</li> </ul>	<ul style="list-style-type: none"> <li>1,000 ft from school</li> <li>300 ft from existing residence not on the property; may be waived by residence owner - example from a State of Washington county</li> </ul>	1,000 ft from school if including storage of product
<b>MANNER / OPERATIONS PLAN</b>					
Lighting	Comply with outdoor lighting standards (DCC 15.10)	Comply with outdoor lighting standards (DCC 15.10)	Comply with outdoor lighting standards (DCC 15.10)	<ul style="list-style-type: none"> <li>Greenhouse lighting shall be hooded and/or shielded to prevent light transmission to neighboring properties or public right of way (set specific illumination standard?)</li> <li>Green house shall be opaque material (or shades may be used before sunrise/after sunset?)</li> </ul>	Comply with outdoor lighting standards (DCC 15.10)
Transportation Management	Same as similar use	Same as similar type of use	Same as similar type of use	Same as similar type of use	Same as similar type of use
Access	Same as similar type of use	Same as similar type of use	Same as similar type of use		
Buffer/Screening			<ul style="list-style-type: none"> <li>A row of evergreen trees or shrubs along the outside perimeter of the facility.</li> <li>No less than 4 feet in height when planted, and spaced in such a way as to obscure the facility from view. Shall be maintained.</li> <li>Combination of existing vegetation, berming, topography, wall, fence, or other can be used.</li> </ul>	<ul style="list-style-type: none"> <li>A row of evergreen trees or shrubs along the outside perimeter of the facility.</li> <li>No less than 4 feet in height when planted, and spaced in such a way as to obscure the facility from view. Shall be maintained.</li> <li>Combination of existing vegetation, berming, topography, wall, fence, or other can be used.</li> </ul>	
Odor control	No odor or smoke shall be emitted that is detectable at or beyond the walls of the facility.	No odor or smoke shall be emitted that is detectable at or beyond the walls of the facility.	Except in the EFU zone, no odor or smoke shall be emitted that is detectable at or beyond the walls of the facility (or property line). Farm use in EFU zone is protected by Right to Farm statutes.	Except in the EFU zone, no odor or smoke shall be emitted that is detectable at or beyond the walls of the facility (or property line). Farm use in EFU zone is protected by Right to Farm statutes.	No odor or smoke shall be emitted that is detectable at or beyond the walls of the facility (or property line). Farm use in EFU protected by Right to Farm statutes.
Noise					
Number of Employees					
Home Occupations					



**BOARD OF COUNTY COMMISSIONERS  
COUNTY OF COWLITZ, STATE OF WASHINGTON**

**ORDINANCE NO. 14 067**

**Repealing Chapter 18.01 interim regulations and adopting Chapter 18.76  
“Recreational Marijuana” of the Cowlitz County Code establishing permanent  
official controls on the production, processing and retailing of recreational marijuana**

**WHEREAS**, pursuant to Article 11, Section 11 Washington State Constitution and RCW 36.70.010 & -.750, RCW 36.32.120, RCW 69.51A.140, and other lawful authority the Board of Cowlitz County Commissioners, the Board has the authority to enact zoning controls and development regulations pertaining to the production, processing, or dispensing of cannabis or cannabis products within its jurisdiction; and

**WHEREAS**, pursuant to said laws and authority, the Board adopted Ordinance No. 13-154 by emergency enactment, and Ordinance 14-016 and Chapter 18.01 of the County Code establishing interim land use controls on recreational marijuana production, processing and retail sales; and

**WHEREAS**, pursuant to such laws and interim enactment, the Board establishing a working group to develop permanent controls to present to the Planning Commission to consider extending, amending or rescinding these interim land use controls; and

**WHEREAS**, the Planning Commission reviewed and considered the working group work product and has recommended adoption of permanent land use controls on recreational marijuana production, processing and retail sales;

**NOW THEREFORE BE IT ORDAINED BY THE BOARD OF COUNTY  
COMMISSIONERS OF COWLITZ COUNTY AS FOLLOWS:**

**Section 1. General Findings.**

1. The purpose of this ordinance is to establish zoning regulations related to the siting of marijuana businesses allowed under Initiative 502 in unincorporated Cowlitz County.
2. Initiative 502 was passed by the voters of the State of Washington in November 2012, providing a framework under which marijuana producers, processors, and retailers can become licensed by the Washington State Liquor Control Board.
3. The SEPA Responsible Official issued a threshold decision for these proposed permanent regulations on July 2, 2014 and comments were accepted through July 16, 2014.
4. On June 25, 2014, the Cowlitz County Planning Commission held a workshop and public hearing on the proposed permanent regulations and on July 11, 2014, transmitted the Commission's adopted findings on and recommendation of adoption of permanent regulations.
5. Marijuana remains illegal under the federal Controlled Substances Act, 21 U.S.C. §801 et seq. State and local regulations do not preempt federal law. Individuals and businesses involved in the production, processing, sales, and possession of marijuana could still be subject to prosecution under federal law. Local zoning and other regulations are not

associated with and are not a defense against a violation of federal law, and are not associated with and are not a defense against violation of state law or administrative licensing of recreational marijuana.

6. While marijuana is still classified as a controlled substance under state law in RCW 69.50.204(c)(22), the adoption of Initiative 502 allows it to be produced, processed and sold under the strict licensing program established by the Washington State Liquor Control Board. Recognizing that the State is proceeding with licensing and regulation of the production, processing and retail of marijuana, the Board believes it necessary to adopt permanent local regulations for these facilities to further protect the public health, safety and welfare of its citizens. Cowlitz County makes no representations or commitments about the lawfulness of the facilities and leaves all issues relating to the legality and licensing of such facilities to be determined by the federal and state governments in the exercise of their lawful authority, as finally determined by a court of appropriate jurisdiction.
7. This ordinance provides reasonable regulations to address compatibility of uses, screening, safety standards and other requirements consistent with the County's desire to provide efficient and effective development and reduce conflicts with other uses.
8. Nothing in this ordinance is intended nor shall be construed to authorize or approve medical marijuana collective gardening or medical marijuana cooperatives.
9. Nothing in this ordinance is intended nor shall be construed to authorize or approve of any violation of federal or state law.

## **Section 2. Repeal and Adoption.**

Ordinance Nos. 13-154 and 14-016, and the official interim controls of Chapter 18.01 of the Cowlitz County Code, entitled "Recreational Marijuana" are hereby repealed, and a new Chapter 18.76, entitled "Recreational Marijuana", attached hereto as "Exhibit A" and incorporated herein by this reference, is hereby adopted in its entirety.

## **Section 3. Codification.**

Only the Code amendments in Chapter 18.76 and its sections 18.76.010 through and including 18.76.090, as set forth in "Exhibit A" attached hereto, shall be codified from this Ordinance and that Chapter 18.01 shall be repealed and redacted from the Code.

## **Section 4. Savings Clause.**

Such repeals and amendments shall not be construed as affecting any existing right acquired under the ordinances or portions of ordinances repealed or amended, nor as affecting any proceeding instituted thereunder, nor any rule, regulation, or order promulgated thereunder, nor the administrative action taken thereunder. Notwithstanding the foregoing actions, obligations under such ordinances or permits issued thereunder and in effect on the effective date of this ordinance shall continue in full force and effect, and no liability thereunder, civil or criminal, shall be in any way modified. Further, it is not the intention of these actions to reenact any ordinance or portions or sections of ordinances previously repeal or amended, unless this ordinance specifically states such intent to reenact such repealed or amended ordinances.

**Section 5. Severability.**

The provisions of this ordinance are declared separate and severable. If any section, paragraph, clause, or phrase of this ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The Board of Commissioners hereby declares that it would have passed this ordinance and each section, paragraph subsection, clause or phrase thereof irrespective of the fact that any one or more sections, paragraph subsections, clauses or phrases may subsequently be found to be unconstitutional or invalid.

**Section 6. Effective Date.**

These regulations are in the public interest and shall take effect immediately upon adoption by the Board of County Commissioners.

APPROVED THIS 29<sup>th</sup> day of July, 2014, after public hearing pursuant to Notice published in The Daily News.

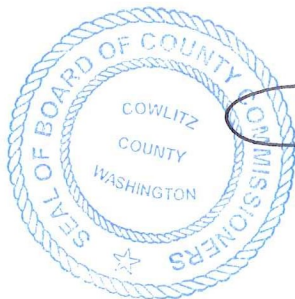
APPROVED THIS 29<sup>th</sup> DAY OF July 2014

ATTEST:

BOARD OF COUNTY COMMISSIONERS  
OF COWLITZ COUNTY, WASHINGTON

Tiffany Ostreim  
Tiffany Ostreim, Clerk of Board

Michael A. Karnofski  
Michael A. Karnofski, Chairman



James R. Misner  
James R. Misner, Commissioner

Dennis P. Weber  
Dennis P. Weber, Commissioner

APPROVED AS TO FORM, ONLY:  
Sue I. Baur, Prosecuting Attorney

Douglas E. Jensen  
Douglas E. Jensen, Chf. Civil Deputy

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**Chapter 18.76  
Recreational Marijuana**

**Sections:**

- 18.76.010 Title.
- 18.76.020 Purpose.
- 18.76.030 Definitions.
- 18.76.040 Applicability.
- 18.76.050 Authority and administration.
- 18.76.060 Location of Recreational Marijuana Facilities.
- 18.76.070 Development Standards
- 18.76.080 Review Process and Administration
- 18.76.090 Violations - Penalties
- 18.76.100 Severability
- 18.76.110 Effective date

**18.76.010 Title.**

The ordinance codified in this chapter shall be known as the "Cowlitz County Recreational Marijuana Code."

**18.76.020 Purpose.**

- A. To acknowledge the passage and enactment of Initiative 502 and associated licensing procedures for recreational marijuana by the state of Washington by developing local review standards for the placement and development of recreational marijuana uses.
- B. Minimize potential adverse impacts to the citizens of Cowlitz County by developing land use regulations regarding the location and development standards for recreational marijuana land uses.
- C. Provide a consistent and predictable path for the development of recreational marijuana land uses and encourage their placement in areas where adverse impacts can be minimized.
- D. Nothing in this ordinance shall be construed to supersede Washington state law prohibiting the acquisition, possession, manufacture, sale, or use of marijuana in any manner not authorized by Chapter 69.51A RCW, or Chapter 69.50 RCW.

**18.76.030 Definitions.**

For the purposes of this chapter the following terms are defined:

Agriculture Area(s) means those area zoned by the Cowlitz County Land Use Ordinance as Agriculture, Agriculture-38, and Agriculture-Industrial. The term "Agriculture Areas" also includes areas classified by the Comprehensive Plan as Agriculture and Agriculture-Industrial. In the event of a conflict between

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the Land Use Ordinance and the Comprehensive Plan, the zoning designation shall prevail.

Day means days that the office of the Director is open for business, unless otherwise specified.

Director means the Director of Building and Planning Department, or his/her designee.

Industrial Area(s) means those area zoned by the Cowlitz County Land Use Ordinance as Heavy Manufacturing and Light Manufacturing. The term "Industrial Areas" also includes areas classified by the Comprehensive Plan as Heavy Industrial and Light Industrial. In the event of a conflict between the Land Use Ordinance and the Comprehensive Plan, the zoning designation shall prevail.

Marijuana means all parts of the plant cannabis, whether growing or not, with a THC concentration greater than 0.3 percent on a dry weight basis; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. The term does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

Marijuana Infused Products means products that contain marijuana or marijuana extracts and are intended for human use. The term "marijuana-infused products" does not include usable marijuana.

Marijuana Paraphernalia does not include drug paraphernalia, as defined in RCW 69.50.102, for introducing into the human body any controlled substance, as defined in RCW 69.50.101, other than marijuana.

Marijuana Processor means a person or facility licensed by the state liquor control board to process marijuana into useable marijuana and marijuana-infused products, package and label useable marijuana and marijuana-infused products for sale in retail outlets, and sell useable marijuana and marijuana-infused products at wholesale to marijuana retailers. All marijuana processors are classified as either a Type 1 or a Type 2 processor (see below).

Marijuana Processor, Type 1 means a marijuana processor that is limited to drying, curing, trimming, and packaging marijuana.

Marijuana Processor, Type 2 means a marijuana processor that extracts concentrates, infuses products, or involves mechanical and/or chemical processing in addition to drying, curing, trimming, and packaging.

Marijuana Producer means a person or facility licensed by the state liquor control board to produce and sell marijuana at wholesale to marijuana processors and other marijuana producers. All marijuana producers are licensed by the Washington State Liquor Control Board as a Tier 1, Tier 2, or Tier 3 producer as identified by WAC 314-55.

Marijuana Retailer means a person licensed by the state liquor control board to sell useable marijuana and marijuana-infused products in a retail outlet.

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Recreational Marijuana Facility is a general term which includes marijuana retailer, Marijuana Processor, and/or Marijuana Producer. A recreational marijuana facility includes the structure(s) in which the recreational marijuana land use operates, as well as the associated parking lot area.

Remote Areas means those area zoned by the Cowlitz County Land Use Ordinance as Forestry Recreation. The term "Remote Areas" also includes areas classified by the Comprehensive Plan as Forestry-Open Space. In the event of a conflict between the Land Use Ordinance and the Comprehensive Plan, the zoning designation shall prevail.

Retail Outlet means a location licensed by the state liquor control board for the retail sale of useable marijuana and marijuana-infused products.

Rural means those area zoned by the Cowlitz County Land Use Ordinance as Rural Residential -1, -2, and -5. The term "Rural Areas" also includes areas classified by the Comprehensive Plan as Rural Residential-1, -2, and -5. In the event of a conflict between the Land Use Ordinance and the Comprehensive Plan, the zoning designation shall prevail.

Setback generally means the required distance from any structural part of a recreational marijuana facility to either a property line and/or to a neighboring residence. Specific measurement criteria are typically identified along with specific setback requirements.

Structure means that which is built or constructed, an edifice or building of any kind or any works erected, built up or composed of parts joined together in some definite manner.

THC Concentration means the percent of delta-9 tetrahydrocannabinol content per dry weight of any part of the plant cannabis, or per volume or weight of marijuana product product, or the combined percent of delta-9 tetrahydrocannabinol and tetrahydrocannabinolic acid in any part of the plant Cannabis regardless of moisture content.

Urban means those areas zoned by the Cowlitz County Land Use Ordinance as Urban Residential, Suburban Residential, Multiple Family, Neighborhood Commercial and Urban Commercial. The term "Urban Areas" also includes areas classified by the Comprehensive Plan as Urban Residential (High and Low Density), Suburban Residential, and Commercial. In the event of a conflict between the Land Use Ordinance and the Comprehensive Plan, the zoning designation shall prevail.

Usable Marijuana means dried marijuana flowers. The term "useable marijuana" does not include marijuana-infused products.

#### **18.76.040 Applicability.**

1. This ordinance shall apply to all unincorporated areas of Cowlitz County.
2. The requirements of this chapter shall apply to all recreational marijuana related land uses, including the production, processing, and retail sales of marijuana, and marijuana infused products and the expansion and/or alteration of any existing recreational marijuana related facilities.

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3. No use that constitutes or purports to be a marijuana producer, marijuana processor, marijuana retailer, or any medical marijuana facility that was engaged in that activity prior to the enactment of this chapter shall be deemed to have been a legally established and that use shall not be entitled to claim legal nonconforming status.

**18.76.050 Authority and administration.**

All applications under this chapter shall be made to the Cowlitz County Building and Planning Department. The Director or his/her designee shall administer, interpret, and enforce the provisions of this chapter and shall provide such forms and establish such procedures as may be necessary to administer this chapter.

**18.76.060 Location of Recreational Marijuana Facilities**

- A. This section identifies the location requirements and required review process for recreational marijuana land uses.

<b>Production</b>					
	<u>Urban</u>	<u>Rural</u>	<u>Industrial</u>	<u>Agriculture</u>	<u>Remote</u>
<u>Tier 1</u>	A	A	A	A	A
<u>Tier 2</u>	S	S	A	S	S
<u>Tier 3</u>	S	S	A	N	N

<b>Processing</b>					
	<u>Urban</u>	<u>Rural</u>	<u>Industrial</u>	<u>Agriculture</u>	<u>Remote</u>
<u>Type 1</u>	A	A	A	S	A
<u>Type 2</u>	S	S	A	N	N

<b>Retail</b>					
	<u>Urban</u>	<u>Rural</u>	<u>Industrial</u>	<u>Agriculture</u>	<u>Remote</u>
<u>Retail Store</u>	A	S	A	N	N

Matrix Key:  
**A:** Administrative review, see section 18.76.080(B)(1)  
**S:** Special Use Review; see section 18.76.080(B)(2)  
**N:** Not allowed

- B. Should any recreational marijuana facility conduct operations in more than one location, individual recreational marijuana approvals for each location

- shall be required. Each location shall follow the appropriate process and meet the appropriate development standards for that particular location.
- C. All marijuana related land uses are subject to the land use provisions of the Cowlitz County Land Use Ordinance, Chapter 18.10, and nothing in this ordinance is intended to supersede those regulations. For those recreational marijuana land uses that do not meet the use requirements for a particular zoning designation, a special use permit shall be required following the process prescribed in CCC 18.76.080(B)(2).

### **18.76.070 Development Standards**

Unless otherwise exempted in this chapter, the standards set forth below shall apply to all recreational marijuana facilities in the unincorporated areas of Cowlitz County. In the event of conflicts with this chapter and any other development standards contained in local ordinance, state law or federal law, the more stringent provision shall apply.

- A. **Building and Fire Codes.** All recreational marijuana facilities and associated structures and development shall conform to the appropriate section(s) of the IBC and IFC.
- B. **Outdoor Production Prohibited.** All recreational marijuana production operations shall be conducted indoors only, in a fully enclosed building or structure. Greenhouses may be considered a fully enclosed building, provided they are an opaque structure and are adequately screened from view of public rights of way and neighboring properties. Screening necessary to meet this standard may be required in addition to the screening standards identified in CCC 18.76.790(E).
- B. **Setbacks.** In addition to those setbacks required by the Cowlitz County Land Use Ordinance and Building Code Ordinance, all recreational marijuana land uses shall maintain the following setbacks.
1. Recreational marijuana land uses located in Urban or Industrial areas shall maintain a minimum setback of 250 feet from any residence, mobile home park, or RV park located on another property. This distance shall be measured as the shortest straight line distance from the exterior wall of any structure associated with the recreational marijuana facility, or exterior boundary of the associated parking lot, to the property line on which the residence, mobile home park, or RV park is located.
  2. For those recreational marijuana land uses within a Rural, Remote, or Agricultural area, the minimum setback is 75 feet, as measured from the exterior wall of any structure associated with the recreational marijuana facility, or exterior boundary of the associated parking lot to exterior wall of any residence located on another property.
- C. **Lighting.** Any lighting proposed with a recreational marijuana facility shall be hooded and/or shielded to prevent light transmission to neighboring properties.



14 OCT

- E. Screening.** The visual impacts of a recreational marijuana facility shall be mitigated through vegetative screening and/or landscaping.
1. A row of evergreen trees or shrubs shall be planted along the outside perimeter of the facility. The vegetation shall be no less than four feet in height when planted, and spaced in such a way as to obscure the facility from view. Any screening shall be maintained in good health and repair at all times.
  2. Subject to approval by the Director, any combination of existing vegetation, berming, topography, decorative walls or fences, or other features instead of landscaping may be permitted if they achieve the same degree of screening as the required landscaping.
  3. Screenings for recreational marijuana retail facilities may be reduced in order to maintain visibility from a public road or right-of-way.
- F. Parking.** All recreational marijuana facilities shall provide adequate parking in accordance with the requirements identified in CCC 18.10.560-.562.
- G. Access.** Demonstration of legal access connecting the recreational marijuana facility and the public right-of-way shall be required at the time of application.
- H. Parcel Size.** All recreational marijuana production and processing facilities shall maintain a minimum lot size based on their location:
1. Facilities located in Rural, Remote, or Agricultural areas shall maintain a minimum legal lot size of 5 acres.
  2. Facilities located within Industrial area Urban areas shall maintain a minimum legal lot size of 1-acre.
  3. Tier 1 production facilities and tier 1 processing facilities operated in only conjunction with a Tier 1 production facility on the same parcel, are not subject to the minimum lot sizes identified above.
- I. Cameras.** Any security cameras proposed with a recreational marijuana facility shall be positioned so as not to intrude on the privacy of adjacent properties.
- J. Zoning Compliance.** In zoned areas, all recreational marijuana related land uses shall meet the requirements of the designation in which they are located. For those recreational marijuana land uses that do not meet the use requirements in a particular zoning designation, a special use permit shall be required following the process prescribed in CCC 18.76.080(B)(2) and CCC 18.10.290-295.
- M. Odor.** No odor or smoke shall be emitted that is detectable at or beyond the walls of the facility, in such a concentration or of such duration as to cause a public nuisance, or threaten health or safety, or to unreasonably infringe upon the use and enjoyment of neighboring uses. Adequate ventilation shall be provided for all facilities to eliminate odors of marijuana detectable outside of the facility.

14 OCT

- N. Retail Separation. Marijuana retailers shall be separated by a minimum of 300 feet from other marijuana retailers. This distance shall be measured as the shortest straight line distance from property line to property line.
- K. Variances. The development standards of this chapter may be reduced, increased, altered, or amended subject to approval of a variance in accordance with the procedures set forth in the CCC 18.10.340 through CCC 18.10.365, or as amended.

#### **18.76.080 Review Process and Administration**

All recreational marijuana facilities shall be reviewed for consistency with this chapter. Applications shall, at a minimum, contain the application materials identified below.

- A. Application Content for all facilities:
  - 1. Master application and parcel description, including assessor's map and parcel number.
  - 2. Scaled site plan identifying all elements of the proposed facility, proposed means of access, and setbacks to all structures and significant features within 300 feet.
  - 3. Vicinity map.
  - 4. Narrative describing all elements of the proposed recreational marijuana land use, and methods to be used to meet the development standards identified within this ordinance.
  - 5. Landscaping/screening plan showing the type, location, and extent of screening or landscaping associated with the facility. This plan shall also identify the methods to be used to maintain the necessary screening. Portions of this requirement may be identified on the scaled site plan required above.
  - 6. Any additional applicable information the Director deems necessary to adequately review the proposal.
- B. Review Process. Upon receipt of a complete application for a recreational marijuana facility, the application will be processed following one of the two procedures described below, as determined by section 18.76.060.
  - 1. Administrative Approval. Those Recreational Marijuana Facilities to be approved administratively by the Director shall follow the following process:
    - a. Within 30 days of the receipt of a complete application, the Director shall distribute copies of the application to agencies with jurisdiction for their review. The return date for the agency findings and recommendations shall be set at 10 days after the date of reviewing agency receipt of the review copies.
    - b. The Director shall ensure that all provisions of this chapter have been complied with, and that all findings and recommendations from the reviewing agencies with jurisdiction have been adequately addressed.



**WHATCOM COUNTY COUNCIL AGENDA BILL**

NO. AB2015-099

CLEARANCES	Initial	Date	Date Received in Council Office	Agenda Date	Assigned to:
Originator: Nick Smith	NAS	3/3/2015	<p>RECEIVED</p> <p>MAR 10 2015</p> <p>WHATCOM COUNTY COUNCIL</p>	3/17/2015	Introduction
Division Head: Mark Personius	WIP	3-3-15		3/31/2015	Public Hearing
Dept. Head: Sam Ryan	SR	3-4-15			
Prosecutor: Royce Buckingham	RB	3-4-15			
Purchasing/Budget:					
Executive: Jack Louws		3/10/15			

**TITLE OF DOCUMENT:**  
 An Ordinance allowing for marijuana production, processing and retailing as authorized by Washington State Initiative 502, and replacing Interim Ordinance 2014-053 that was adopted on October 14, 2014.

- ATTACHMENTS:**
- 1. Cover Letter
  - 2. Ordinance – track changes
  - 3. Ordinance – non-track changes
  - 4. Planning Commission Findings
  - 5. PDS Staff Report, February 3, 2015

SEPA review required? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> NO SEPA review completed? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> NO	Should Clerk schedule a hearing? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> NO Requested Date
---	--

**SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:** *(If this item is an ordinance or requires a public hearing, you must provide the language for use in the required public notice. Be specific and cite RCW or WCC as appropriate. Be clear in explaining the intent of the action.)*

An Ordinance allowing for marijuana production, processing and retailing as authorized by Washington State Initiative 502, and replacing Interim Ordinance 2014-053 that was adopted on October 14, 2014.

<p><b>COMMITTEE ACTION:</b></p> <p>3/17/2015: Amended and Approved</p>	<p><b>COUNCIL ACTION:</b></p> <p>3/17/2015: Substitute Introduced 6-0</p> <p>3/31/2015: Adopted 6-0, Ord. 2015-006 (Kremen absent)</p>
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<b>Related County Contract #:</b>	<b>Related File Numbers:</b>	<b>Ordinance or Resolution Number:</b>  Ord. 2015-006
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**Please Note:** Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County's website at: [www.co.whatcom.wa.us/council](http://www.co.whatcom.wa.us/council).

**SPONSORED BY:** \_\_\_\_\_  
**PROPOSED BY:** P & D  
**INTRODUCTION DATE:** 3/17/2015

**ORDINANCE NO. 2015-006**

**ORDINANCE ALLOWING MARIJUANA PRODUCTION, PROCESSING AND RETAILING AS AUTHORIZED BY WASHINGTON STATE INITIATIVE 502**

**WHEREAS**, on November 6, 2012, Initiative 502 was passed by the voters of the State of Washington, thereby amending Chapter 69.50 RCW and providing the regulatory framework for marijuana producers, processors, and retailers to become licensed by the Washington State Liquor Control Board ("WSLCB"); and

**WHEREAS**, on November 16, 2013, the WSLCB adopted final marijuana licensing rules as codified in Chapter 314-55 WAC; and

**WHEREAS**, during the period between November 18, 2013 and December 20, 2013, the WSLCB accepted marijuana license applications for marijuana production, processing and retail facilities; and

**WHEREAS**, Whatcom County began receiving notifications of proposed marijuana facilities from the WSLCB in mid-December, 2013; and

**WHEREAS**, the WSLCB began issuing marijuana producer, processor, and retail licenses to qualified applicants starting in April, 2014; and

**WHEREAS**, marijuana facilities as authorized under Initiative 502, are currently not specifically addressed in Whatcom County Code; and

**WHEREAS**, on September 28, 2013, Whatcom County Planning and Development Services adopted Zoning Interpretation Policy: PL1-73-003Z which determined that marijuana proposed uses, as allowed by Initiative 502, would be regulated in the same way as any other commodity that is grown, processed, or sold in Whatcom County; and

**WHEREAS**, on January 16, 2014, the Washington State Attorney General issued an opinion stating that Initiative 502 does not preempt counties from banning or placing additional regulatory requirements on marijuana related businesses within their jurisdictions; and

**WHEREAS**, on February 11, 2014, the Whatcom County Council adopted Ordinance 2014-011, an emergency ordinance imposing a moratorium on the acceptance of all building and/or land use applications that pertain to marijuana producers, processors, and retailers; and

**WHEREAS**, on March 25, 2014, the Whatcom County Council adopted Ordinance 2014-019, an interim ordinance removing the moratorium and enacting interim regulations pertaining to marijuana producers, processors, and retailers; and

**WHEREAS**, on April 22, 2014, the Whatcom County Council adopted Ordinance 2014-027, an interim ordinance replacing Ordinance 2014-019 and enacting revised interim regulations pertaining to marijuana producers, processors, and retailers; and

**WHEREAS**, on October 14, 2014, the Whatcom County Council extended the interim regulations pertaining to marijuana producers, processors, and retailers of Ordinance 2014-027 with the adoption of Ordinance 2014-053; and

**WHEREAS**, this ordinance would adopt permanent regulations to provide protection to communities and residential uses surrounding marijuana related businesses, as well as provide WSLCB applicants the opportunity to apply for building and/or land use permits; and

**WHEREAS**, on March 31, 2015, the Whatcom County Council held a public hearing; and

**WHEREAS**, the Whatcom County Council hereby adopts the following findings of fact and conclusions:

### **FINDINGS**

1. Notice of the proposed amendment was sent to the Department of Commerce and other state agencies on February 3, 2015.
2. On February 5, 2015 the Whatcom County State Environmental Policy Act (SEPA) Official issued a SEPA threshold Determination of Non-Significance (DNS); a non-project action. The comment period for this determination ended on February 19, 2015 and no comments were received.
3. Notice of the Planning Commission hearing for the proposed text amendment was published in the Bellingham Herald on January 30 and February 16, 2015.
4. The Planning Commission held two public hearings on the proposed amendments on February 12 and February 26, 2015.
5. The proposal adopts the development regulations as outlined in Interim Ordinance 2014-053 with the following changes:
  - Defines marijuana processing, production and retail to include "facility;"
  - Requires marijuana signage for retail facilities to be consistent with WAC 314-55-155;
  - Clarifies how the setback is measured from a marijuana facility to a community center, to be consistent with WAC 314-55-050(10);
  - Clarifies how the measurement is taken from a marijuana facility to a residential structure;
  - Allows the zoning administrator to require a landscape buffer consistent to WCC 20.80.345 for marijuana production and processing facilities in the Rural, Agriculture and Rural Forestry zone districts; and
  - Requires that all indoor marijuana production and processing facilities to install a mechanical ventilation system that is designed by a Washington State Licensed Engineer to control odor;
  - Remove marijuana processing and production from the Rural Residential and Rural Residential – Island zones and remove marijuana retail from Resort Commercial zone.

6. Pursuant to Whatcom County Code (WCC) 20.90.050, Whatcom County Planning and Development Services has: evaluated the proposed amendment in relationship to the goals, objectives and policies of the Whatcom County Comprehensive Plan as authorized by the Washington State Growth Management Act (GMA) – RCW 36.70A; and considered possible environmental impacts that have been identified by the lead agency designated SEPA official through the State Environmental Policy Act (SEPA) threshold determination process.

**CONCLUSIONS**

- 1) The proposed amendments are consistent with the Comprehensive Plan, and are in the public interest.
- 2) The proposed amendments should not result in any significant environmental impacts.

**NOW, THEREFORE, BE IT ORDAINED** by the Whatcom County Council that the Whatcom County Zoning Code is hereby amended as shown in Exhibit A.

**BE IT FINALLY ORDAINED** that if any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional; such decision shall not affect the validity of the remaining portions of this ordinance. The Council hereby declares that it would have passed this code and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases has been declared invalid or unconstitutional, then the original ordinance or ordinances shall be in full force and effect.

**ADOPTED** this 31st day of March, 2015.

**ATTEST:**



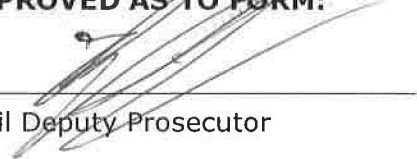
Dana Brown-Davis, County Clerk

**WHATCOM COUNTY COUNCIL  
WHATCOM COUNTY, WASHINGTON**



Carl Weimer, Council Chair

**APPROVED AS TO FORM:**



Civil Deputy Prosecutor



Jack Louws, County Executive

Approved      ( ) Denied

Date: April 2, 2015

**EXHIBIT A (Revised 3/17/2015)**

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**Chapter 20.36 Rural (R) District**

.....  
**20.36.050 Permitted uses.**

.....  
**.062** Marijuana production facility, provided that in addition to the criteria found in WCC 20.80.690-694:

- (1) The facility shall not be located within 1,000 feet of a community center. The distance shall be measured as the shortest straight line distance from the property line of the proposed building/business location to the property line of the community center.
- (2) The facility shall not be located within 300 feet of any existing residential unit not located on the same parcel as the facility. The distance shall be measured as the shortest straight line distance from the closest point of a single-family dwelling (structure) to any structure or fence used for the production of marijuana. The zoning administrator may waive this spacing requirement from residential units if the owners of all existing residential units within 300 feet provide a notarized written agreement as provided by the department consenting to the facility, and the waiver is approved through an administrative approval process per WCC 20.84.235.
- (3) On parcels smaller than 4.5 acres the facility shall not exceed a total of 2,000 square feet, except where the facility is contained within a building that existed on the effective date of this ordinance.

.....  
**20.36.130 Administrative approval uses.**

.....  
**.137** Marijuana processing facility, provided that in addition to the criteria found in WCC 20.80.690-694 and WCC 20.84.235:

- (1) The facility is accessory to the on-site production of marijuana.
- (2) The facility shall not be located within 300 feet of any existing residential unit not located on the same parcel as the facility. The distance shall be measured as the shortest straight line distance from the closest point of a single-family dwelling (structure) to any structure or fence used for the



processing of marijuana. The zoning administrator may waive this spacing requirement if the owners of all existing residential units within 300 feet provide a notarized written agreement as provided by the department consenting to the facility.

- (3) On parcels smaller than 4.5 acres the total area used for marijuana processing and production shall not exceed 2,000 square feet, except where the facility is contained within a building that existed on the effective date of this ordinance.

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## **Chapter 20.40 Agriculture (AG) District**

.....

### **20.40.050 Permitted uses.**

.....

**.059** Marijuana production facility, provided that in addition to the criteria found in WCC 20.80.690-694:

- (1) The facility shall not be located within 1,000 feet of a community center. The distance shall be measured as the shortest straight line distance from the property line of the proposed building/business location to the property line of the community center.
- (2) The facility shall not be located within 300 feet of any existing residential unit not located on the same parcel as the facility. The distance shall be measured as the shortest straight line distance from the closest point of a single-family dwelling (structure) to any structure or fence used for the production of marijuana. The zoning administrator may waive this spacing requirement from residential units if the owners of all existing residential units within 300 feet provide a notarized written agreement as provided by the department consenting to the facility, and the waiver is approved through an administrative approval process per WCC 20.84.235.

.....

### **20.40.100 Accessory uses.**

.....

**.115** Marijuana processing facility, provided in addition to the criteria found in WCC 20.80.690-694:

- (1) The facility is accessory to the on-site production of marijuana.
- (2) The facility shall not be located within 300 feet of any existing residential unit not located on the same parcel as the facility. The distance shall be measured as the shortest straight line distance from the closest point of a single-family dwelling (structure) to any structure or fence used for the processing of marijuana. The zoning administrator may waive this spacing requirement if the owners of all existing residential units within 300 feet provide a notarized written agreement as provided by the department consenting to the facility, and the waiver is approved through an administrative approval process per WCC 20.84.235.

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## **Chapter 20.42 Rural Forestry (RF) District**

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### **20.42.050 Permitted uses.**

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**.070** Marijuana production facility, provided that in addition to the criteria found in WCC 20.80.690-694:

- (1) The facility shall not be located within 1,000 feet of a community center. The distance shall be measured as the shortest straight line distance from the property line of the proposed building/business location to the property line of the community center.
- (2) The facility shall not be located within 300 feet of any existing residential unit not located on the same parcel as the facility. The distance shall be measured as the shortest straight line distance from the closest point of a single-family dwelling (structure) to any structure or fence used for the production of marijuana. The zoning administrator may waive this spacing requirement from residential units if the owners of all existing residential units within 300 feet provide a notarized written agreement as provided by the department consenting to the facility, and the waiver is approved through an administrative approval process per WCC 20.84.235.

\*\*\*\*\*

### **20.42.100 Accessory uses.**

.....

**.106** Marijuana processing facility, provided that in addition to the criteria found in WCC 20.80.690-694:

- (1) The facility is accessory to the on-site production of marijuana.
- (2) The facility shall not be located within 300 feet of any existing residential unit not located on the same parcel as the facility. The distance shall be measured as the shortest straight line distance from the closest point of a single-family dwelling (structure) to any structure or fence used for the processing of marijuana. The zoning administrator may waive this spacing requirement if the owners of all existing residential units within 300 feet provide a notarized written agreement as provided by the department consenting to the facility, and the waiver is approved through an administrative approval process per WCC 20.84.235.

.....

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## **Chapter 20.51 Lake Whatcom Watershed Overlay District**

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### **20.51.080 Prohibited uses.**

In addition to the uses prohibited in the underlying zone districts, the following uses are prohibited, except as per Chapter 20.83 WCC:

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**.102** Marijuana production or processing facility.

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## **Chapter 20.59 Rural General Commercial (RGC) District**

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### **20.59.050 Permitted uses.**

**.051** Retail and office type uses.

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- (4) Retail establishments including but not limited to grocery, liquor, drug, sundries, variety, building supplies, clothing, florist, nurseries, optical, sporting goods, appliance, music, pet stores and marijuana retail facilities.

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## **Chapter 20.60 Neighborhood Commercial Center (NC) District**

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### **20.60.050 Permitted uses.**

#### **.051 Retail and office type uses.**

.....

- (7) Marijuana retail facility, not greater than 2,500 square feet.
- (8) Other convenience retail shops not greater than 2,500 square feet per shop.
- (9) Professional offices not greater than 2,500 square feet per business.

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## **Chapter 20.61 Small Town Commercial (STC) District**

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### **20.61.050 Permitted uses.**

#### **.051 Retail and office type uses.**

.....

- (4) Retail establishments with less than 2,500 square feet of retail floor area per establishment, including but not limited to liquor, drug, sundries, variety, clothing, florist, optical, sporting goods, appliance, craft, music, pet stores and marijuana retail facilities.

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## **Chapter 20.62 General Commercial (GC) District**

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**20.62.050 Permitted uses.**

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**.059** Retail establishments including but not limited to grocery, liquor, drug, sundries, variety, building supplies, clothing, florist, nurseries, optical, sporting goods, appliance, music, pet stores and marijuana retail facilities.

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**Chapter 20.66 Light Impact Industrial (LII) District**

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**20.66.050 Permitted uses.**

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**.087** Marijuana production or processing facility.

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**20.66.700 Performance standards.**

.....

**.709 Marijuana Odor**

For indoor facilities no odor or smoke shall be emitted that is detectable at or beyond the walls of the facility, in such a concentration or of such duration as to cause a public nuisance, or threaten health or safety, or to unreasonably infringe upon the use and enjoyment of neighboring use. The applicant shall install an exhaust system that is designed and constructed to capture sources of contaminants to prevent spreading of contaminants or odors to other occupied parts of the building or surrounding area. The system must be designed by a licensed Washington State Professional Engineer.

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**Chapter 20.68 Heavy Impact Industrial (HII) District**

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**20.68.050 Permitted uses.**

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**.066** Marijuana production or processing facility.

.....

**.709 Marijuana Odor**

For indoor facilities no odor or smoke shall be emitted that is detectable at or beyond the walls of the facility, in such a concentration or of such duration as to cause a public nuisance, or threaten health or safety, or to unreasonably infringe upon the use and enjoyment of neighboring use. The applicant shall install an exhaust system that is designed and constructed to capture sources of contaminants to prevent spreading of contaminants or odors to other occupied parts of the building or surrounding area. The system must be designed by a licensed Washington State Professional Engineer.

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**Chapter 20.69 Rural Industrial Manufacturing (RIM) District**

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**20.69.050 Permitted uses.**

.....

**.053 Agriculture type uses.**

**Uses related to agriculture including, but not limited to:**

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(10) Marijuana production facility.

(11) Marijuana processing facility.

.....

**20.69.700 Performance standards.**

.....

**.708 Marijuana Odor**

For indoor facilities no odor or smoke shall be emitted that is detectable at or beyond the walls of the facility, in such a concentration or of such duration as to

cause a public nuisance, or threaten health or safety, or to unreasonably infringe upon the use and enjoyment of neighboring use. The applicant shall install an exhaust system that is designed and constructed to capture sources of contaminants to prevent spreading of contaminants or odors to other occupied parts of the building or surrounding area. The system must be designed by a licensed Washington State Professional Engineer.

.....

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**Chapter 20.71 Water Resource Protection Overlay District**

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**20.71.200 Prohibited uses.**

**In addition to the uses prohibited in the underlying zone districts, the following uses are prohibited, except as per Chapter 20.83 WCC:**

.....

**.222** Marijuana production facility.

.....

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**Chapter 20.80 Supplementary Requirements**

**20.80.210 Minimum setbacks.**

Resource Lands Setbacks							
Agricultural (AG)							
<i>Road Type</i>						<i>Other</i>	
Commercial, Industrial, I-5, State Hwys, Principal & Minor Arterials	Collector Arterials or Major Collectors	Minor Collectors	Local Access Streets	Neighborhood Collector	Minor Access Streets	Side Yard	Rear Yard
50'	50'	50'	50'	50'	50'	20'	20'
1. The 50-foot front yard setback requirement for new buildings or additions may be waived if the zoning administrator finds the new building or addition is located along the same							

building line(s) of existing structures and will result in no additional encroachment and the public interest, safety and health are protected; provided, that for a new building the applicant shall also demonstrate that the proposed location is necessary for the economic viability and the continued operation of the agricultural use.

2. The minimum separation between new residences not located on the same property and farm uses such as barns, pens, milking sheds, or areas used to contain, house or feed animals or store manure or feed shall be 300 feet. New farm uses such as barns, pens, milking sheds, or areas used to contain, house or feed animals or store manure or feed shall be situated at least 150 feet from existing residences not located on the same property. Expansion of existing facilities within the 150-foot buffer, providing such expansion is not closer to a neighbor's residence, and pastures are excluded from this section's requirements.

3. Parcels of less than five nominal acres shall have the following minimum setbacks:

Front yards:

- Primary arterials and secondary arterials: 45 feet.
- Collector arterials: 35 feet.
- Neighborhood collectors, local access streets: 25 feet.
- Minor access streets: 20 feet.

Minimum front yard requirements can be reduced by the zoning administrator for boundary line adjustments or farmstead parcels established through WCC 20.40.253 and 20.40.254 if the proposed placement of the structures will result in a better fit with critical areas or prime soils and goes through the approval process in Chapter 21.03 WCC. In no case shall front yard depth be less than 20 feet.

Side yards: minimum side yard setbacks shall be five feet. For boundary line adjustments or farmstead parcels established through WCC 20.40.253 and 20.40.254, the exterior side yard and exterior rear yard requirements of habitable structures shall be 30 feet.

Rear yards: minimum rear yard setbacks shall be five feet.

4. A marijuana production or processing facility shall not be located within 1,000 feet of a community center. The distance shall be measured as the shortest straight line distance from the property line of the proposed building/business location to the property line of the community center.

5. A marijuana production or processing facility shall not be located within 300 feet of any



existing residential unit not located on the same parcel as the facility. The distance shall be measured as the shortest straight line distance from the closest point of a single-family dwelling (structure) to any structure or fence used for the production or processing of marijuana. The zoning administrator may waive this spacing requirement from residential units if the owners of all existing residential units within 300 feet provide a notarized written agreement as provided by the department consenting to the facility, and the waiver is approved through an administrative approval process per WCC 20.84.235.

6. A 10-foot setback from the international border between Canada and the United States shall be maintained as an open space vista. The 10-foot setback area may be used for landscaping, agriculture, and natural vegetation. Structures may only be built within the 10-foot setback area after approval from the International Boundary Commission.

**Commercial Forestry (CF)**

<i>Road Type</i>						<i>Other</i>	
<b>Commercial, Industrial, I-5, State Hwys, Principal &amp; Minor Arterials</b>	<b>Collector Arterials or Major Collectors</b>	<b>Minor Collectors</b>	<b>Local Access Streets</b>	<b>Neighborhood Collector</b>	<b>Minor Access Streets</b>	<b>Side Yard</b>	<b>Rear Yard</b>
45'	35'	25'	25'	25'	20'	100'	100'

*Water Resource Protection Overlay*

30'	30'	20'	20'	20'	20'	100'	100'
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1. Parcels utilized solely for community centers shall observe the following minimum setback requirements: front yard: 50 feet; side yard: 25 feet; rear yard: 25 feet.

**Rural Forestry (RF)**

<i>Road Type</i>						<i>Other</i>	
<b>Commercial, Industrial, I-5, State Hwys, Principal &amp; Minor Arterials</b>	<b>Collector Arterials or Major Collectors</b>	<b>Minor Collectors</b>	<b>Local Access Streets</b>	<b>Neighborhood Collector</b>	<b>Minor Access Streets</b>	<b>Side Yard</b>	<b>Rear Yard</b>

45'	35'	25'	25'	25'	20'	20'	20'
<i>Water Resource Protection Overlay</i>							
30'	30'	20'	20'	20'	20'	20'	20'

1. Setbacks shall be increased to 100 feet for those parcels in the Rural Forestry Zone situated adjacent to the Commercial Forestry Zone, except that such parcels whose owners have filed an agreement with the county auditor as specified in WCC 20.42.651 shall be subject to the standard setback of the Rural Forestry Zone. Forest industry buildings, stationary equipment or storage areas excluding scaling stations and watchman's stations shall not be located within 100 feet of any other zone district.
2. Parcels utilized solely for community centers shall observe the following minimum setback requirements: front yard: 50 feet; side yard: 25 feet; rear yard: 25 feet.
3. When a permitted residence (WCC 20.42.056) adjoins an existing parcel of 20 acres or more in size or a parcel that is being cultivated for commercial forestry production, a minimum building setback of 100 feet shall be established from the common property line.
4. Lummi Island scenic estates setbacks shall be administered under the Rural Residential Island setback standards.
5. A 10-foot setback from the international border between Canada and the United States shall be maintained as an open space vista. The 10-foot setback area may be used for landscaping, agriculture, and natural vegetation. Structures may only be built within the 10-foot setback area after approval from the International Boundary Commission.
6. A marijuana production or processing facility shall not be located within 1,000 feet of a community center. The distance shall be measured as the shortest straight line distance from the property line of the proposed building/business location to the property line of the community center.
7. A marijuana production or processing facility shall not be located within 300 feet of any existing residential unit not located on the same parcel as the facility. The distance shall be measured as the shortest straight line distance from the closest point of a single-family dwelling (structure) to any structure or fence used for the production or processing of marijuana. The zoning administrator may waive this spacing requirement from residential units if the owners of all existing residential units within 300 feet provide a notarized written agreement as provided by the department consenting to the facility, and the waiver is approved through an administrative approval process per WCC 20.84.235.

## Rural Zoning Setbacks

Rural (R)							
<i>Road Type</i>						<i>Other</i>	
<b>Commercial, Industrial, I-5, State Hwys, Principal &amp; Minor Arterials</b>	<b>Collector Arterials or Major Collectors</b>	<b>Minor Collectors</b>	<b>Local Access Streets</b>	<b>Neighborhood Collector</b>	<b>Minor Access Streets</b>	<b>Side Yard</b>	<b>Rear Yard</b>
45'	45'	35'	25'	25'	20'	5' <sup>1</sup>	5' <sup>1</sup>
<i>Water Resource Protection Overlay</i>							
30'	30'	20'	20'	20'	20'	5'	5'

1. Setbacks shall be increased to 100 feet for those parcels situated adjacent to the Commercial Forestry Zone District, except that such parcels whose owners have filed an agreement with the county auditor as specified in WCC 20.36.651 shall be subject to the standard setback in WCC 20.80.210.
2. Lots created after 2001 through the cluster provisions, or lots created through the APO provisions which will be used for human habitation, shall be set back a minimum of 100 feet from the property line of any parcel or portion thereof which is designated or used for agricultural purposes. No structures shall be constructed within 30 feet of exterior, side and rear property lines, and no structure shall be constructed within 30 feet of an agricultural use. Subject to any further requirements within Chapter 20.38 WCC, Agriculture Protection Overlay.
3. A 10-foot setback from the international border between Canada and the United States shall be maintained as an open space vista. The 10-foot setback area may be used for landscaping, agriculture, and natural vegetation. Structures may only be built within the 10-foot setback area after approval from the International Boundary Commission.
4. A marijuana production or processing facility shall not be located within 1,000 feet of a community center. The distance shall be measured as the shortest straight line distance from the property line of the proposed building/business location to the property line of the community center.

5.A marijuana production or processing facility shall not be located within 300 feet of any existing residential unit not located on the same parcel as the facility. The distance shall be measured as the shortest straight line distance from the closest point of a single-family dwelling (structure) to any structure or fence used for the production or processing of marijuana. The zoning administrator may waive this spacing requirement from residential units if the owners of all existing residential units within 300 feet provide a notarized written agreement as provided by the department consenting to the facility, and the waiver is approved through an administrative approval process per WCC 20.84.235.

<sup>1</sup>Roof overhangs or other architectural features shall not project further than 18 inches into the side or rear yard setbacks. Such overhangs may extend six feet into the front yard setback; however, in no case will they extend more than one-half the depth of the front yard setback.

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## **20.80.250 Special setback provisions by district.**

### **20.80.251 Residential districts.**

(1) Urban Residential District. Setbacks shall be increased to 100 feet for those parcels situated adjacent to Forestry Zone District, except that such parcels which are less than 20,000 square feet in a subdivision approved prior to January 1, 1987, and whose owners have filed an agreement with the county auditor as specified in WCC 20.20.651 shall be subject to the standard setback in WCC 20.80.210.

(2) Residential Rural District.

(a) Setbacks shall be increased to 100 feet for those parcels situated adjacent to Forestry Zone District, except that such parcels whose owners have filed an agreement with the county auditor as specified in WCC 20.32.651 shall be subject to the standard setback in WCC 20.80.210.

(3) Urban Residential Medium Density District. Setback requirements for mobile home parks shall be 20 feet from the perimeter of the park for side and rear yards and shall be screened from neighboring uses in accordance with WCC 20.80.345.

(4) Residential Rural-Island District.

Setbacks shall be increased to 100 feet for those parcels situated adjacent to Forestry Zone Districts, except that such parcels whose owners have filed an agreement with the county auditor as specified in WCC 20.34.651 shall be subject to the standard setback in WCC 20.80.210. (Ord. 99-080, 1999; Ord. 99-058, 1999).

**20.80.252 Rural District.**

1. Rural District Setbacks. Setbacks shall be increased to 100 feet for those parcels situated adjacent to the Commercial Forestry Zone District, except that such parcels whose owners have filed an agreement with the county auditor as specified in WCC 20.36.651 shall be subject to the standard setback in WCC 20.80.210. (Ord. 99-080, 1999).
2. A marijuana production or processing facility shall not be located within 1,000 feet of a community center. The distance shall be measured as the shortest straight line distance from the property line of the proposed building/business location to the property line of the community center.
3. A marijuana production or processing facility shall not be located within 300 feet of any existing residential unit not located on the same parcel as the facility. The distance shall be measured as the shortest straight line distance from the closest point of a single-family dwelling (structure) to any structure or fence used for the production or processing of marijuana. The zoning administrator may waive this spacing requirement from residential units if the owners of all existing residential units within 300 feet provide a notarized written agreement as provided by the department consenting to the facility, and the waiver is approved through an administrative approval process per WCC 20.84.235.

**20.80.255 Agriculture District.**

- (1) The 50-foot front yard setback requirement for new buildings or additions may be waived if the zoning administrator finds the new building or addition is located along the same building line(s) of existing structures and will result in no additional encroachment, and the public interest, safety and health are protected; provided, that for a new building the applicant shall also demonstrate that the proposed location is necessary for the economic viability and the continued operation of the agricultural use.
- (2) The minimum separation between new residences not located on the same property and farm uses such as barns, pens, milking sheds, packinghouses and slaughterhouses, or areas used to contain, house or feed animals or store manure or feed, shall be 300 feet. New farm uses such as barns, pens, milking sheds, or areas used to contain, house or feed animals or store manure or feed shall be situated at least 150 feet from existing residences not located on the same property. Expansion of existing facilities within the 150-foot buffer, providing such expansion is not closer to a neighbor's residence, and pastures are excluded from this section's requirements.
- (3) The minimum separation between packinghouses/slaughterhouses and schools shall be 500 feet.

(4) The minimum separation between packinghouses/slaughterhouses and adjacent property lines shall be 150 feet. (5) A marijuana production or processing facility shall not be located within 1,000 feet of a community center. The distance shall be measured as the shortest straight line distance from the property line of the proposed building/business location to the property line of the community center.

(6) A marijuana production or processing facility shall not be located within 300 feet of any existing residential unit not located on the same parcel as the facility. The distance shall be measured as the shortest straight line distance from the closest point of a single-family dwelling (structure) to any structure or fence used for the production or processing of marijuana. The zoning administrator may waive this spacing requirement from residential units if the owners of all existing residential units within 300 feet provide a notarized written agreement as provided by the department consenting to the facility, and the waiver is approved through an administrative approval process per WCC 20.84.235.

**20.80.256 Forestry districts. (Adopted by reference in WCCP Chapter 2.)**

(1) Setbacks shall be increased to 100 feet for those parcels in the Rural Forestry Zone situated adjacent to the Commercial Forestry Zone, except that such parcels whose owners have filed an agreement with the county auditor as specified in WCC 20.42.651 shall be subject to the standard setback in WCC 20.80.210. Forest industry buildings, stationary equipment or storage areas excluding scaling stations and watchman's stations shall not be located within 100 feet of any other zone district.

(2) Parcels utilized solely for community centers shall observe the following minimum setback requirements: front yard: 50 feet; side yard: 25 feet; rear yard: 25 feet.

(3) Where a parcel, created pursuant to the clustering provision (WCC 20.42.300) or the planned unit development provision (Chapter 20.85 WCC) or when a permitted residence (WCC 20.42.056), adjoins an existing parcel of 20 acres or more in size or a parcel that is being cultivated for commercial forestry production, a minimum building setback of 100 feet shall be established from the common property line.

(4) For parcels of less than five nominal acres, unless the provisions of subsection (2) of this section are applicable, the zoning setback established by the zoning district shall be observed.

(5) A marijuana production or processing facility shall not be located within 1,000 feet of a community center. The distance shall be measured as the shortest straight

line distance from the property line of the proposed building/business location to the property line of the community center.

(6) A marijuana production or processing facility shall not be located within 300 feet of any existing residential unit not located on the same parcel as the facility. The distance shall be measured as the shortest straight line distance from the closest point of a single-family dwelling (structure) to any structure or fence used for the production or processing of marijuana. The zoning administrator may waive this spacing requirement from residential units if the owners of all existing residential units within 300 feet provide a notarized written agreement as provided by the department consenting to the facility, and the waiver is approved through an administrative approval process per WCC 20.84.235.

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**WCC 20.80.410 Signs – General provisions – Applicable to all districts.**

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(5) Marijuana retail facility license holders shall abide by WAC 314-55-155 (as amended) regarding signage.

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**20.80.690 Marijuana Production and Processing**

**20.80.691 Marijuana State License Required.**

Prior to commencing operations, a marijuana producer, processor, or retailer shall obtain approval as a state-licensed marijuana producer, processor, or retailer under Chapter 69.50 RCW, as amended, and Chapter 314-55 WAC, as amended.

**20.80.692 Application for County Development Permits - Timing.**

Applicants for marijuana production, processing, or retailing may apply for county development permits at any time. Applicants who wish to apply for county permits, or commence construction of facilities for producing, processing, or retailing of marijuana under chapter 69.50 RCW, prior to obtaining approval as a state-licensed marijuana producer, processor or retailer do so at their own risk. Final occupancy of the building will not be granted until a state liquor control board license has been approved.

**20.80.693 Production**

- (1) For indoor facilities no odor or smoke shall be emitted that is detectable at or beyond the walls of the facility, in such a concentration or of such duration as to cause a public nuisance, or threaten health or safety, or to unreasonably infringe upon the use and enjoyment of neighboring use. The applicant shall install an exhaust system that is designed and constructed to capture sources of contaminants to prevent spreading of contaminants or odors to other occupied parts of the building or surrounding area. The system must be designed by a licensed Washington State Professional Engineer.
- (2) Any lights used to illuminate the facility shall be so arranged as to direct the light away from the adjoining property and the public road.
- (3) No traffic shall be generated by such a facility in greater volume than would normally be expected in the applicable zoning district and appropriate for the road classification which serves the property.
- (4) Any need for parking generated by the conduct of such a facility shall meet the off-street parking requirements as specified in this title. At least one additional space shall be provided for each nonresident on-site employee.
- (5) The proposed use shall be compatible with the general appearance and character of the surrounding area. The Zoning Administrator at his or her discretion may require landscape screening pursuant to the requirements of WCC 20.80.345.

#### **20.80.694 Processing**

- (1) The facility employs no more than 10 permanent employees, except that in the Agriculture and Rural Forestry zones the facility may employ no more than 20 employees.
- (2) For indoor facilities no odor or smoke shall be emitted that is detectable at or beyond the walls of the facility, in such a concentration or of such duration as to cause a public nuisance, or threaten health or safety, or to unreasonably infringe upon the use and enjoyment of neighboring use. The applicant shall install an exhaust system that is designed and constructed to capture sources of contaminants to prevent spreading of contaminants or odors to other occupied parts of the building or surrounding area. The system must be designed by a licensed Washington State Professional Engineer.
- (3) Any lights used to illuminate the facility shall be so arranged as to direct the light away from the adjoining property and the public road.



(4) No traffic shall be generated by such a facility in greater volume than would normally be expected in the applicable zoning district and appropriate for the road classification which serves the property.

(5) Any need for parking generated by the conduct of such a facility shall meet the off-street parking requirements as specified in this title. At least one additional space shall be provided for each nonresident on-site employee.

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## **20.97 Definitions.**

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### **20.97.225 Marijuana, marihuana or cannabis.**

"Marijuana," "marihuana" or "cannabis" means all parts of the plant cannabis, whether growing or not, with a THC concentration greater than 0.3 percent on a dry weight basis; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. The term does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

### **20.97.226 Marijuana processing facility.**

"Marijuana processing" means a facility licensed by the state liquor control board to process marijuana into useable marijuana and marijuana-infused products, package and label useable marijuana and marijuana-infused products for sale in retail outlets, and sell useable marijuana and marijuana-infused products at wholesale to marijuana retailers. A marijuana processing facility shall include any structure that is associated with the processing of marijuana.

### **20.97.227 Marijuana production facility.**

"Marijuana production" means a facility licensed by the state liquor control board to produce and sell marijuana at wholesale to marijuana processors. The area of a marijuana production facility includes all the area enclosed within a structure or fence that is required by the state liquor control board for the production of marijuana. Indoor production shall be within a fully enclosed secure indoor facility

or greenhouse with rigid walls, a roof, and doors. Outdoor production may take place in non-rigid greenhouses, other structures, or an expanse of open or cleared ground fully enclosed by a physical barrier.

**20.97.228 Marijuana retail facility.**

"Marijuana retail" means a facility licensed by the state liquor control board to sell useable marijuana and marijuana-infused products in a retail outlet. A marijuana retail facility shall include any building that is associated with the sale of marijuana.

20.97.229 Marina.

20.97.230 May.