



Whatcom County

COUNTY COURTHOUSE
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Agenda Bill Master Report

File Number: AB2021-648

File ID:	AB2021-648	Version:	1	Status:	Substitute Adopted
File Created:	10/29/2021	Entered by:	CStrong@co.whatcom.wa.us		
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Assigned to:	Council	Final Action:	02/08/2022		
Agenda Date:	02/08/2022	Enactment #:	ORD 2022-011		

Primary Contact Email: cstrong

TITLE FOR AGENDA ITEM:

Ordinance adopting amendments to WCC Title 20 (Zoning) regulating the production, processing, and retail sales of recreational marijuana in Whatcom County and repealing Ordinance No. 2021-066

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Ordinance adopting amendments to WCC Title 20 (Zoning) regulating the production, processing, and retail sales of recreational marijuana in Whatcom County and repealing Ordinance No. 2021-066

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
11/09/2021	Council	INTRODUCED FOR PUBLIC HEARING Aye: 6 Browne, Buchanan, Byrd, Donovan, Elenbaas, and Frazey Nay: 0 Absent: 1 Kershner	Council
11/23/2021	Council	HEARD PUBLIC TESTIMONY AND REFERRED TO COMMITTEE Aye: 6 Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner Nay: 0	Council Committee of the Whole

Agenda Bill Master Report Continued (AB2021-648)

Absent: 0

Abstain: 1 Browne

12/07/2021 Council Committee of the Whole DISCUSSED

01/11/2022 Council REFERRED TO Council Planning and
COMMITTEE Development Committee

Aye: 7 Elenbaas, Frazey, Galloway, Kershner, Buchanan, Byrd, and Donovan

Nay: 0

Absent: 0

01/25/2022 Council Planning and Development DISCUSSED
Committee

02/08/2022 Council SUBSTITUTE ADOPTED

Aye: 7 Buchanan, Byrd, Donovan, Elenbaas, Frazey, Galloway, and Kershner

Nay: 0

Absent: 0

Attachments: Original Staff Memo, Original Proposed Ordinance, Original Exhibit A, Map of Facilities, Rosellison Comments to Council with PDS Responses.pdf, SB6505, SB6505 Final Bill Report, SB6505 Fiscal Note, Galloway Proposed Changes 2.4.2022, Galloway Submitted Substitute Exhibit A 2.4.2022, PDS Memo Re: Galloway Amendments 2.7.2022, Revised Exhibit A Galloway Amendments 2.7.2022

ORDINANCE NO. 2022-011

**ADOPTING AMENDMENTS TO WCC TITLE 20 (ZONING) REGULATING THE PRODUCTION, PROCESSING,
AND RETAIL SALES OF RECREATIONAL MARIJUANA IN WHATCOM COUNTY AND REPEALING
ORDINANCE NO. 2021-066**

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

WHEREAS, on November 16, 2013, the WSLCB adopted final cannabis licensing rules as codified in Chapter 314-55 WAC. During the period between November 18, 2013 and December 18, 2013, the WSLCB accepted cannabis license applications for cannabis production, processing and retail facilities. Whatcom County began receiving notifications of proposed cannabis facilities from the WSLCB in mid-December 2013, and the WSLCB began issuing cannabis producer, processor, and retail licenses to qualified applicants in March of 2014; 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 cannabis related businesses within their jurisdictions; and,

WHEREAS, the Prosecuting Attorney and Planning and Development Services (PDS) had at the time implemented a zoning interpretation policy, which stated that PDS would regulate cannabis proposed uses as allowed by Initiative 502 in the same way as any other commodity that is grown, processed, or sold in Whatcom County, it became evident that many of those proposed locations could conflict with other surrounding uses; 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 cannabis producers, processors, retailers and medical cannabis collective gardens; and,

WHEREAS, the County developed and implemented several sets of interim regulations during that time, though none were deemed appropriate by the Council as permanent regulations; and,

WHEREAS, on March 31, 2015, the Whatcom County Council adopted Ordinance 2015-006, which contains the current County zoning regulations for recreational cannabis type uses, treating cannabis similar to other agricultural products; and,

WHEREAS, Whatcom County Code (WCC) 20.97.227 defines marijuana production as a facility licensed by the state Liquor and Cannabis Board to produce, harvest, trim, dry, cure, and package marijuana, and sell marijuana at wholesale to state-licensed marijuana processors and other state licensed marijuana producers; and,

WHEREAS, WCC 20.97.227 states marijuana production may take place either indoors within a fully enclosed secured facility or a greenhouse with rigid walls, a roof and doors, or outdoors in non-rigid

greenhouses, other structures or an expanse of open or cleared ground fully enclosed by a physical barrier; and,

WHEREAS, Ordinance 2015-006 allows for the production and processing of cannabis in the Rural (administrative uses), Rural Forestry (permitted uses) and Agriculture zone districts (permitted uses), subject to a proposed facility meeting several stated use standards. Such standards include odor controls (for indoor grows only), lighting, traffic and parking control measures, as well as setbacks of 1,000 feet from community centers and 300 feet from residences not located on the same property. The ordinance also allowed for the production and processing of marijuana in the Rural Industrial and Manufacturing, Light Impact Industrial, and Heavy Impact Industrial districts as permitted uses, subject to odor control measures (for indoor grows); and,

WHEREAS, the WSLCB is no longer issuing new licenses, existing licenses throughout Washington State can be transferred and Whatcom County was notified by the WSLCB of approximately 30 recreational marijuana production and/or processing renewal licenses last year (2020) within unincorporated Whatcom County; and,

WHEREAS, while earlier licensees were small, local producers, their licenses now appear to be being transferred to larger operators with more capital who are buying up the earlier licenses and expanding and/or changing operations and/or locations; and,

WHEREAS, prior to adoption of the first moratorium on issuing new permits for certain marijuana production facilities, the Council, Executive, Planning Commission, and PDS received complaints from residents adjacent to existing and proposed cannabis facilities regarding excessive odor, lighting, and potential water usage, suggesting that the County's cannabis regulations may not be sufficient; and,

WHEREAS, on March 23, 2021, the County Council adopted the 2021 Docket, a component of the PDS work plan, including item PLN2021-00009, to "Review and revise Whatcom County Code relating to marijuana growing and processing in rural areas. Consider impacts of marijuana growing and processing facilities in rural areas, and evaluate growing and processing facilities as an agricultural or non-agricultural use. Consider compatibility with GMA and County Comprehensive Plan." However, due to the pandemic, the Planning Commission and County Council have backlogs of other issues to address, and PDS will need time to work with the community to properly develop and process any potential regulatory amendments; and,

WHEREAS, on April 20, 2021, the County Council adopted Ordinance No. 2021-023, imposing a six-month interim moratorium prohibiting the filing, acceptance, or processing of new applications for permits or authorizations for recreational marijuana production and/or processing facilities which are proposed to operate outdoors or in greenhouses; and,

WHEREAS, on October 26, 2021, through the adoption of Ordinance No. 2021-066, the Council extended that moratorium for an additional 6 months; and

WHEREAS, once this ordinance is adopted and effective there is no longer a need for the interim moratorium imposed by Ordinance No. 2021-066;

WHEREAS, pursuant to the Washington State Constitution, the general police powers granted to counties empower and authorize Whatcom County to adopt land use controls to provide for the regulation of land uses within the County and to provide that such uses shall be consistent with applicable law; and,

FINDINGS OF FACT

1. The County Council placed on the County's annual docket PLN2021-00009, directing Planning and Development Services (PDS) to: "Review and revised Whatcom County Code relating to marijuana growing and processing in rural areas. Consider impacts of marijuana growing and processing facilities in rural areas, and evaluate growing and processing facilities as an agricultural or non-agricultural use. Consider compatibility with GMA and County Comprehensive Plan."
2. Whatcom County Planning and Development Services (PDS) submitted an application (PLN2021-00009) to revise the County's recreational marijuana production, processing, and retail sales zoning regulations.
3. A determination of non-significance (DNS) was issued under the State Environmental Policy Act (SEPA) on September 29, 2021.
4. Notice of the subject amendments was submitted to the Washington State Department of Commerce on September 13, 2021, for their 60-day review.
5. On October 14, 2021, the Planning Commission held a duly noticed public hearing to consider testimony on the proposed draft amendments.
6. The County Council held a duly noticed public hearing on the proposed amendments on November 23, 2021.
7. The amendments are consistent with the Growth Management Act, Whatcom County Comprehensive Plan, Chapter 314-55 WAC, and other applicable requirements.
8. The proposed amendments reflect current local circumstances and promote the general public health, safety, morals and welfare.

CONCLUSIONS

1. The amendments to the development regulations are in the public interest.
2. The amendments are consistent with the Whatcom County Comprehensive Plan.

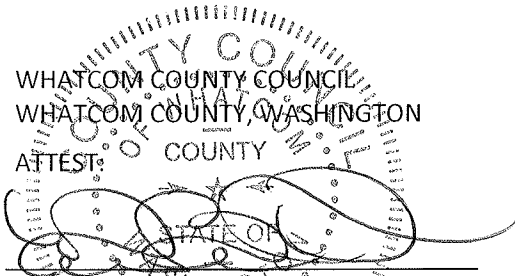
NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that:

Section 1. Amendments to the Whatcom County Code are hereby adopted as shown in Exhibit A.

Section 2. Ordinance No. 2021-066 is hereby repealed in its entirety upon the effective date of this ordinance.

ADOPTED this 8th day of February, 2022.

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON
ATTEST: COUNTY

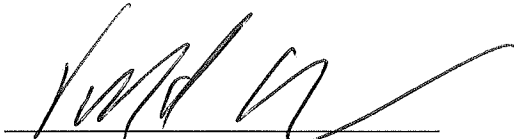
The seal of Whatcom County, Washington, is a circular emblem. It features a central five-pointed star surrounded by a wreath. The words "WHATCOM COUNTY" are arched across the top, and "WASHINGTON" is arched across the bottom. The words "SEAL OF" are written in the center.

Dana Brown-Davis, Council Clerk

APPROVED as to form:


/s/ Royce Buckingham (approved via e-mail) / JL

Civil Deputy Prosecutor

A handwritten signature in black ink, appearing to read "Todd Donovan", written over a horizontal line.

Todd Donovan, Council Chair

Approved () Denied

A handwritten signature in black ink, appearing to read "Satpal Sidhu", written over a horizontal line.

Satpal Sidhu, Executive

Date: 2-14-22

Exhibit A – Proposed MarijuanaCannabis Code Amendments

Substitute Proposed by Councilmember Kaylee Galloway, 2/8/22

(CM Galloway edits shown in yellow highlight.)

WCC Title 20 Zoning

Chapter 20.36 RURAL (R) DISTRICT

20.36.130 Administrative approval uses.

The following uses are permitted subject to administrative approval pursuant to WCC 22.05.028.

...

.137 Type 1 MarijuanaCannabis Production Facilities, subject to WCC 20.80.690y; provided, that in addition to the criteria found in WCC 20.80.690 through 20.80.694:

- (2) 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. The zoning administrator may waive this spacing requirement from community centers if the authorized representatives of all existing community centers within 1,000 feet provide a notarized written agreement as provided by the department consenting to the facility.
- (3) 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 marijuanacannabis. 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.
- (4) On parcels smaller than four and one-half 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 the ordinance codified in this section.

.138 MarijuanaCannabis Processing Facilities, subject to WCC 20.80.690.y; provided, that in addition to the criteria found in WCC 20.80.690 through 20.80.694 and WCC 22.05.028:

- (6) The facility is accessory to the on-site production of marijuanacannabis.
- (7) 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 marijuanacannabis. 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.

- (8) On parcels smaller than four and one-half acres the total area used for ~~marijuana~~cannabis 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 the ordinance codified in this section.

20.36.150 Conditional uses.

...

~~.160~~ Type 2 Marijuana Cannabis Production Facilities, subject to WCC 20.80.690.

...

Chapter 20.40 AGRICULTURE (AG) DISTRICT

20.40.050 Permitted uses.

Unless otherwise provided herein, permitted, accessory, and conditional uses shall be administered pursuant to the applicable provisions of WCC Chapter 20.80 WCC (Supplementary Requirements), and Chapter 22.05 WCC (Project Permit Procedures), Chapter 16.08 (the Whatcom County SEPA) Ordinance, Title 21 (Land Division Regulations), the Whatcom County Subdivision Ordinance and Title 23 the Whatcom County (Shoreline Management Program). The following are permitted uses:

...

~~.059~~ Marijuana production facility; provided, that in addition to the criteria found in WCC 20.80.690 through 20.80.694:

- (2) 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. The zoning administrator may waive this spacing requirement from community centers if the authorized representatives of all existing community centers within 1,000 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 22.05.028.
- (3) 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 22.05.028.

...

20.40.100 Accessory uses.

...

~~.115~~ Marijuana Processing Facility, WCC 20.80.690 through 20.80.694:

- (2)(1) _____ The facility is accessory to the on-site production of marijuana.
- (3) 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 22.05.028.

20.40.130 Administrative approval uses.

...

~~.140 Type 1 MarijuanaCannabis Production Facilities, subject to WCC 20.80.690.~~

~~.141 MarijuanaCannabis Processing Facilities, subject to WCC 20.80.690.~~

...

Chapter 20.42 RURAL FORESTRY (RF) DISTRICT

20.42.050 Permitted uses.

Unless otherwise provided herein, permitted, accessory, and conditional uses shall be administered pursuant to the applicable provisions of WCC Chapter 20.80 WCC (Supplementary Requirements), and Chapter 22.05 WCC (Project Permit Procedures), ~~the Whatcom County Chapter 16.08 (SEPA) Ordinance, Title 21 (Land Division Regulations) the Whatcom County Subdivision Ordinance, and Title 23 the Whatcom County (Shoreline Management Program).~~

...

~~.070 Marijuana production facility; provided, that in addition to the criteria found in WCC 20.80.690 through 20.80.694:~~

- ~~(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. The zoning administrator may waive this spacing requirement from community centers if the authorized representatives of all existing community centers within 1,000 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 22.05.028.~~
- ~~(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 22.05.028.~~

...

20.42.100 Accessory uses.

...

~~.106 Marijuana processing facility; provided, that in addition to the criteria found in WCC 20.80.690 through 20.80.694:~~

- ~~(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 22.05.028.~~

...

Chapter 20.69 RURAL INDUSTRIAL AND MANUFACTURING (RIM) DISTRICT

20.69.050 Permitted uses.

The following permitted uses shall be allowed subject to an evaluation by the Director zoning administrator pursuant to the provisions of this chapter and WCC Chapter 20.80 (Supplementary Requirements)-WCC. In a rural community designation, nonresidential uses listed below are permitted if a use of the same type existed in that same rural community designation on July 1, 1990, per WCC 20.80.100(1). In a rural business designation all uses listed below are permitted.

.051 Manufacturing/fabrication type uses.

...

- ~~(17) Type 2 Marijuana cannabis production facilities, subject to WCC 20.80.690.~~
- ~~(18) Marijuana Cannabis processing facilities, subject to WCC 20.80.690.~~

...

20.69.700 Performance standards.

20.69.704 Odor, dust, dirt, and smoke.

- ~~(1) Except as specified in subsection (2), No odor, dust, dirt, or smoke shall be emitted that is detectable at or beyond the property line, for the use concerned, 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 property beyond the boundaries of the district.~~
- ~~(2) For marijuana cannabis production or processing facilities, odor shall be regulated pursuant to WCC 20.80.690(3)(g).~~

~~20.69.708 Marijuana odor.~~ [CES1]

~~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.~~

Chapter 20.66 LIGHT IMPACT INDUSTRIAL (LII) DISTRICT

20.66.050 Permitted uses.

Unless otherwise provided herein, permitted and accessory uses shall be administered pursuant to the applicable provisions of WCC Chapter 20.80 ~~WCC~~ (Supplementary Requirements), Chapter 22.05 ~~WCC~~ (Project Permit Procedures), Chapter 16.08 (the ~~Whatcom County~~ SEPA) Ordinance, Title 21 (Land Division Regulations), the ~~Whatcom County~~ Subdivision Ordinance and Title 23 the ~~Whatcom County~~ (Shoreline Management Program).

...

~~.087 Type 2 Marijuana Cannabis Production or Processing Facilities, subject to WCC 20.80.690.~~

~~.088 Marijuana Cannabis Processing Facilities, subject to WCC 20.80.690.~~

...

20.66.700 Performance standards.

...

20.66.704 Odors.

(1) Except as specified in subsection (2), ~~No~~ odor, dust, dirt, or smoke shall be emitted that is detectable at or beyond the property line, for the use concerned, 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 property beyond the boundaries of the district.

(2) For ~~marijuana~~ cannabis production or processing facilities, odor shall be regulated pursuant to WCC 20.80.690(3)(g).

~~20.66.709 Marijuana odor.~~ [CES2]

~~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.~~

Chapter 20.68 HEAVY IMPACT INDUSTRIAL (HII) DISTRICT

20.68.050 Permitted uses.

Unless otherwise provided herein, permitted and accessory uses shall be administered pursuant to the applicable provisions of WCC Chapter 20.80 ~~WCC~~ (Supplementary Requirements), and Chapter 22.05 ~~WCC~~ (Project Permit Procedures), Chapter 16.08 (the ~~Whatcom County~~ SEPA) Ordinance, Title 21 (Land Division Regulations), the ~~Whatcom County~~ Subdivision Ordinance and Title 23 the ~~Whatcom County~~ (Shoreline Management Program). The purpose of the SIC numbers listed within this chapter is to adopt by reference other activities similar in nature to the use identified herein. (Policies of the subarea Comprehensive Plan may preclude certain permitted uses to occur in particular subareas. Please refer to the policies of the applicable subarea plan to determine the appropriateness of a land use activity listed below.)

...

~~.066 Type 2 MarijuanaCannabis Production or Processing Facilities, subject to WCC 20.80.690.~~

~~.067 MarijuanaCannabis processing facilities, subject to WCC 20.80.690.~~

...

20.68.700 Performance standards.

...

~~(1) Except as specified in subsection (2), No odor, dust, dirt, or smoke shall be emitted that is detectable at or beyond the property line, for the use concerned, 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 property beyond the boundaries of the district.~~

~~(2) For marijuanaCannabis production or processing facilities, odor shall be regulated pursuant to WCC 20.80.690(3)(g).~~

...

~~20.68.709 MarijuanaCannabis odor. [CES3]~~

~~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.~~

20.80 SUPPLEMENTARY REQUIREMENTS

~~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. [CES4]~~

~~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 and Cannabis Board license has been approved. [CES5]~~

~~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. [CES6]~~

- ~~(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. [CES7]~~
- ~~(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. [CES8]~~
- ~~(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. [CES9]~~
- ~~(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. [CES10]~~

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. [CES11]~~
- ~~(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. [CES12]~~
- ~~(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. [CES13]~~
- ~~(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. [CES14]~~
- ~~(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. [CES15]~~

20.80.690 MarijuanaCannabis – Production and Processing Facilities.

- ~~(1) **General. MarijuanaCannabis** production or processing facilities shall comply with RCW Title 69, Chapter 314-55 WAC, and the following general standards:

 - ~~a. The WSLCB must approve a **marijuanacannabis** license for the subject property prior to issuance of the County's certificate of occupancy for buildings proposed for **marijuanacannabis** production or processing. Any permitting or construction work done prior to receiving said license is done so at the applicant's own risk.~~
 - ~~b. Consistent with WAC 314-55-015, **marijuanacannabis** production and processing shall not take place in a residence or other location where law enforcement access, without notice or cause, is limited.~~~~

- c. MarijuanaCannabis production and processing are not allowed as home occupations or cottage industries.
- d. MarijuanaCannabis production and processing operations may not be located in critical areas or their buffers (WCC Chapter 16.16, Critical Areas) or in the shoreline jurisdiction (WCC Title 23).
- e. Nonconforming Uses. This section applies to those marijuanacannabis facilities legally existing as of INSERT DATE OF ADOPTION OF THESE RULES[CES16] that, due to noncompliance with these standards, become nonconforming. Legally existing facilities that meet these standards are not considered nonconforming and may continue the use or they may expand with the proper permits.
 - (i) Continuation of Nonconforming Uses. Any legally existing marijuanacannabis production or processing facility that becomes nonconforming may continue operations as a nonconforming use within the terms of their permit(s) even when those facilities do not meet the standards of this section, pursuant to WCC 20.83.010.
 - (ii) Expansion of Nonconforming Uses. Similarly, expansion may be allowed pursuant to WCC 20.83.020, EXCEPT that:
 - A. Expansion of nonconforming Type 2 marijuanacannabis production facilities is prohibited; and,
 - B. Any other expansion shall be limited to 10% (in area) unless the standards of this section are met.
 - (iii) Change to Another Nonconforming Use. WCC 20.83.040 shall not apply: Nonconforming marijuanacannabis production or processing facilities shall not be able to change to another nonconforming use.

(2) District Specific Standards.

- a. Facility Size – [KG17]
 - (i) In the Rural district, production **and/or** processing facilities on parcels smaller than 4.5 acres shall not exceed a total of 2,000 square feet. On lots of 4.5 acres or greater production and processing facilities shall not exceed 1 acre.
 - (ii) In the Agriculture district, production **and/or** processing facilities on parcels **smaller than 4.5 acres shall not exceed a total of 2,000 square feet. On lots of 4.5 acres or greater ~~processing and production~~ production and processing facilities shall not exceed 2 acres.**
- b. Separation of Uses – In the Rural and Agriculture districts, no facility shall be located within 1,000 feet of a community center [CES18] or within 300 feet of any residential dwelling unit not located on the same parcel as the facility and existing at the time of application. Said distance shall be measured as the shortest straight line distance from property lines (for community centers) or structures (for residences).
- c. Separation of Facilities – In the Rural and Agriculture districts, no marijuanacannabis production facilities shall be located within 1,000 feet of each other. Said distance shall be measured as the shortest straight line distance from such facilities.
- d. Limit on Number of Licenses per Lot. In the Rural and Agriculture districts, only one Washington State Liquor and Cannabis Board (WSLCB) marijuanacannabis production license may be used per legal lot (though may be combined with one processing license).

- e. Accessory Use Only. In the Rural and Agriculture districts, processing facilities are only allowed as an accessory use to a production facility.
- f. Hazardous Materials – ~~MarijuanaCannabis~~ processing using hazardous or flammable solvents or gases is allowed only in the LII, HII, or RIM districts. Producers and processors that will use chemicals, industrial solvents, or other noxious or hazardous substances shall comply with all federal, state, and County safety, fire, structural, storage, and disposal standards. They shall describe the proposed use of hazardous substances, methods, equipment, solvents, gases, and mediums identified in WAC 314-55-104 on permit applications and site plans.

(3) Facility Design Standards.

- a. Lighting – For both Type 1 and 2 production facilities:
 - (i) Outdoor fixtures illuminating production or processing operations shall be designed and down-shielded to direct light away from adjoining properties, critical areas, shorelines, and public roads.
 - (ii) All structures using artificial lighting for aiding in the growth cycle of plants shall install and employ mechanisms (e.g., blackout shades) that prevent light from escaping production structures.
- b. Screening – ~~MarijuanaCannabis~~ production and processing facilities shall be landscaped and screened consistent with WCC 20.80.300, et seq. (Landscaping). Screening shall be located outside of the state’s required security fence to provide a visual barrier.
- c. Security – Producers and processors shall install the security requirements of WAC 314-55-083 prior to issuance of the County’s certificate of occupancy for a ~~marijuanacannabis~~ operation.
- d. Parking – Such facilities shall meet the off-street parking requirements of WCC 20.80.500, et seq. (Off-street Parking and Loading Requirements).
- e. Water and Waste Disposal – Permit applications shall include documentation of compliance with the water system requirements and waste disposal regulations of WCC Title 24 (Health Code) and WAC 314-55-097.
- f. Noise – Producers and processors required to install odor control system per subsection (g) shall comply with WCC 20.80.620 (Noise). Fan noise from operations shall be minimized. A mechanical engineer licensed in the state of Washington shall design the noise control system, to be approved by the Building Official, using standard industry practices such as installing fans with components listed by Underwriters Laboratories (UL) and a combination of the following techniques and components:
 - (i) Short and straight line vent runs;
 - (ii) Silencers and insulated vents, vent sleeves and mufflers;
 - (iii) Acoustic ducting;
 - (iv) Fan speed controllers;
 - (v) Soundproofing boxes;
 - (vi) Sound-muffling casing;
 - (vii) Padded foam cushions under the fans;
 - (viii) Intelligent programming motors and controllers; and
 - (ix) Hanging fans hung from bungee cords from hooks in ceiling.
- g. Odor –

- (i) All Production and Processing – No odor, terpenes, or other similar volatile organic compounds (VOCs) shall be emitted that is detectable at or beyond the property boundaries of the facility in such a concentration or of such duration as to cause a public nuisance or threaten health or safety **as defined by RCW 9.66.010**.
- (ii) Type 2 Production – Type 2 producers shall minimize odors emitted by using best management practices and technology, and all air must go through an odor control system before being vented outdoors. A mechanical engineer licensed in the state of Washington shall design the odor control system using guidance from the National Air Filtration Association and approved by the Building Official. The odor control plan must incorporate a combination of the following site design practices, tools, or other newly improved technologies to mitigate odors:
- A. Use of filters on exhaust air prior to dispersal;
 - B. Placement of operations after consideration of predominant wind directions;
 - C. Installation of additional vegetative buffers around grow areas;
 - D. Reduction of passive odor escapes by tightening and sealing structures;
 - E. Use of negative pressure techniques and air locks to reduce odors from escaping when doors open;
 - F. Use of chillers that move water around the structure and leave air in place instead of air conditioning;
 - G. Installation of carbon filter scrubbers to heating, ventilation, and air conditioning systems;
 - H. Installation of dry vapor systems;
 - I. Installation of ionizers;
 - J. Use of mini-vapor screens on the interior, and Vapomatic and vapor screens on the exterior of structures;
 - K. Installation of a piping system on perimeter fencing that neutralizes malodorous molecules;
 - L. Installation of a gas phase filtration system; and/or,
 - M. Installation of a fog system to disperse mixed water- and odor-neutralizing chemicals.

h. Building Permits Required – Building permits shall be required for any structures used in ~~MarijuanaCannabis~~ Production Facilities.

20.80.691 MarijuanaCannabis – Retail Sales Facilities.

~~MarijuanaCannabis~~ retail sales facilities shall comply with RCW Title 69, WAC Chapter 314-55, and the following.

1. The WSLCB must approve a ~~marijuanacannabis~~ retail sales license for the subject property prior to issuance of the County’s certificate of occupancy for buildings proposed for ~~marijuanacannabis~~ retail sales. Any permitting or construction work done prior to receiving said license is done so at the applicant’s own risk.

2. Consistent with WAC 314-55-015, marijuanacannabis retail sales shall not take place in a residence or other location where law enforcement access, without notice or cause, is limited. MarijuanaCannabis retail sales are not allowed as home occupations or cottage industries.
3. Retail sales facilities shall install the security requirements of WAC 314-55-083 prior to issuance of the County's certificate of occupancy for a marijuanacannabis operation.
4. Such facilities shall meet the off-street parking requirements of WCC 20.80.500, et seq. (Off-street Parking and Loading Requirements).

Chapter 20.97 DEFINITIONS

20.97.010 Agriculture.

"Agriculture" means the use of land for farming, horticulture, floriculture, viticulture, and the necessary accessory uses for packing, treating or storing the produce; ~~provided, however, that, though the~~ operation of any such accessory uses shall be secondary to that of normal agricultural activities. ~~However, the production of marijuana is not considered agriculture.~~ The term "agriculture," "agricultural product," "horticulture," and "horticultural product" may not be construed to include or relate to cannabis, useable cannabis, or cannabis-infused products unless the applicable term is explicitly defined to include cannabis, useable cannabis, or cannabis-infused products pursuant to RCW 82.04.213.

20.97.010.1 Agricultural Processing.

"Agricultural processing" means the transformation, either chemically or physically, of raw agricultural goods including but not limited to washing, grading, sizing, drying, extracting, icing, producing ornamental agricultural products, sorting, cutting, pressing, bagging, freezing, canning, packaging, milling, crushing, fermenting, aging, pasteurizing, preserving, storage, bottling, but excluding slaughtering of livestock. Agricultural processing includes those process steps associated with product preparation and processing. Storage, warehousing, and distributing products in conjunction with the agricultural processing activity occurring on that site shall be allowed. However, the processing of marijuanacannabis is not considered agricultural processing.

~~20.97.225-051.1~~^[CES19] **MarijuanaCannabis, ~~marihuana or cannabis.~~**

"MarijuanaCannabis," (a.k.a., "marijuana," "marihuana," or "cannabis"), as defined and regulated by RCW 69.50 and RCW 15.125, 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.

~~20.97.051.2226~~^[CES20] **MarijuanaCannabis processing facility.**

"MarijuanaCannabis processing facility" means a facility licensed by the state Liquor and Cannabis Board to process marijuanacannabis into useable marijuanacannabis, marijuanacannabis concentrates, and

~~marijuanacannabis-infused products;~~ package and label useable ~~marijuanacannabis~~ and ~~marijuanacannabis-infused products for sale in retail outlets;~~ and sell useable ~~marijuanacannabis~~ and ~~marijuanacannabis-infused products at wholesale to marijuanacannabis~~ retailers. A ~~marijuanacannabis~~ processing facility shall include any structure that is associated with the processing of ~~marijuanacannabis~~.

20.97.051.3227^[CES21] **MarijuanaCannabis production facility.**

“~~MarijuanaCannabis~~ production facility” means a facility licensed by the state Liquor and Cannabis Board to produce, harvest, trim, dry, cure, and package ~~marijuana~~ cannabis, and sell ~~marijuanacannabis~~ at wholesale to state-licensed ~~marijuanacannabis~~ processors and other state-licensed ~~marijuanacannabis~~ producers. A ~~marijuanacannabis~~ producer may also produce and sell ~~marijuanacannabis~~ plants, seed, and plant tissue culture to other state-licensed ~~marijuanacannabis~~ producers. The area of a ~~marijuana~~ cannabis production facility includes all the area enclosed within a structure or fence that is required by the state Liquor and Cannabis Board for the production of ~~marijuanacannabis~~. Where limitations on size are imposed pursuant to §20.80.690, the “facility” shall include all structures related to the production or processing of ~~marijuanacannabis~~ and any ground in which ~~marijuanacannabis~~ is grown. For the purposes of this code, Whatcom

- A. “~~Type 1 MarijuanaCannabis~~ Outdoor ~~p~~roduction Facilities” shall mean production ~~may take~~ place outdoors, including in an expanse of open or cleared ground, or in nonrigid greenhouses, ~~other structures~~ that have no artificial lighting for aiding in the growth cycle, ~~or an expanse of open or cleared ground fully enclosed by a physical barrier;~~ except that Type 1 facilities may allocate up to 10% of the total square footage of their allowed facility area to genetic preservation and plant propagation in a designated indoor area with artificial lighting. This area must be clearly identified and described in the permit the application, and is subject to all the supplemental requirements of a Type II Facility; however, no flowering plants are permitted in this area at any time.
- B. “~~Indoor-Type 2 MarijuanaCannabis~~ ~~p~~roduction Facilities” shall mean production facilities that use artificial lighting for aiding in the growth cycle ~~be within a fully enclosed secure indoor facility or greenhouse with rigid walls, a roof, and doors.~~

20.97.051.4228^[CES22] **MarijuanaCannabis retail facility.**

“~~MarijuanaCannabis~~ retail facility” means a facility licensed by the state Liquor and Cannabis Board to sell useable ~~marijuanacannabis~~ and ~~marijuanacannabis-infused products~~ in a retail outlet. A ~~marijuanacannabis~~ retail facility shall include any building ~~or portion thereof~~ that is associated with the sale of ~~marijuanacannabis~~.