

WHATCOM COUNTY

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Memorandum

TO: The Honorable Whatcom County Council
The Honorable Satpal Sidhu, Whatcom County Executive

FROM: Cliff Strong, Senior Planner

THROUGH: Mark Personius, Director

DATE: February 7, 2022

SUBJECT: Marijuana Regulations Update

Councilmember Galloway has proposed substitute language for AB2021-648 (attached). Following is her rationale along with Planning and Development Services responses.

1. Replace the word “marijuana” with “cannabis” throughout the code

CM Galloway’s Reason: There is a growing movement at the state level to make this change in acknowledgement of the controversial history of the word and with commitment to racial equity. The House recently passed [HB 1210](#), which would replace the term "marijuana" with the term "cannabis" throughout the Revised Code of Washington, with bipartisan support 83-13. Making this change in Whatcom Code would be proactive, but ensure consistency should the state pass this bill.

Staff Response: Staff considered this, but the term “marijuana” is used in other parts of the code that were not proposed to be amended. Staff has no opposition to this recommendation, but if Council chooses to do so, the amendments shown in Exhibit A to this memo should also be made to maintain consistency. If this is something Council wants to do, we’ve worked up a plan to add those remaining changes to the 2021 Miscellaneous Code Amendments prior to its introduction on 2/8/22. Council could adopt the proposed marijuana (cannabis) regulations as amended by CM Galloway on 2/8, which would be shortly follow up by the 2021 Miscellaneous Code Amendments. This would change all references of “marijuana” to “cannabis.”

2. Place holder for 20.80.690(2)a(i) and (ii)

CM Galloway’s Reason: Light editing for consistency

Staff Response: Staff has no opposition to this recommendation.

3. Add “as defined by RCW 9.66.010” to 20.80.690(3)g(i)

CM Galloway’s Reason: This would ensure our nuisance standards are consistent with state law.

Staff Response: Staff has no opposition to this recommendation. For Council’s edification, RCW 9.66.010 defines “public nuisance” as:

A public nuisance is a crime against the order and economy of the state. Every place

- (1) Wherein any fighting between people or animals or birds shall be conducted; or,
- (2) Wherein any intoxicating liquors are kept for unlawful use, sale or distribution; or,

(3) Where vagrants resort; and

Every act unlawfully done and every omission to perform a duty, which act or omission

- (1) Shall annoy, injure or endanger the safety, health, comfort, or repose of any considerable number of persons; or,
- (2) Shall offend public decency; or,
- (3) Shall unlawfully interfere with, befoul, obstruct, or tend to obstruct, or render dangerous for passage, a lake, navigable river, bay, stream, canal or basin, or a public park, square, street, alley, highway, or municipal transit vehicle or station; or,
- (4) Shall in any way render a considerable number of persons insecure in life or the use of property;

Shall be a public nuisance.

- 4. For 20.97.010 Agriculture definition – Remove “However, the production of marijuana is not considered agriculture” and adds “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.”**

CM Galloway’s Reason: Ensures county code follows Washington State in how it defines marijuana/cannabis. This law was derived from definitions established in SB 6505 (2014) regarding taxation of marijuana products.

Staff Response: Staff has no opposition to this recommendation. For Council’s edification, RCW 82.04.213(4) defines marijuana as:

"Marijuana," "useable marijuana," and "marijuana-infused products" have the same meaning as in RCW 69.50.101.

RCW 69.50.101(y) defines marijuana as:

"Marijuana" or "marihuana" 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:

- (1) 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; or
- (2) Hemp or industrial hemp as defined in RCW 15.140.020, seeds used for licensed hemp production under chapter 15.140 RCW.

- 5. For 20.97.225 Marijuana/Cannabis definition – Add “as defined and regulated by RCW 69.50 and RCW 15.125,”**

CM Galloway’s Reason: Add clarity and consistency to state law. From Royce Buckingham legal memo:

The entire Washington State regulatory scheme for marijuana growing and processing is contained in Title 69 RCW – Food, Drugs, Cosmetics, and Poisons. Marijuana growing and processing is extensively addressed under Chapter 69.50 RCW – The Uniform Controlled Substances Act at RCW 69.50.325-395. Thus, Marijuana is regulated as a drug. Agriculture, on the other hand, is regulated under Title 15 RCW - Agriculture and Marketing. This title has only a few sporadic references to marijuana. It does not serve as the regulatory home for marijuana growing and processing.” Chapter 15.125 RCW has to do with marijuana and marijuana products.

Staff Response: Staff has no opposition to this recommendation.

Exhibit A

Additional amendments that should be made to the WCC if Council accepts CM Galloway's proposal to use "cannabis" rather than "marijuana."

Chapter 20.61 Small Town Commercial (STC) District

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~~ cannabis retail facilities.

Chapter 20.60 Neighborhood Commercial Center (NC) District

20.60.050 Permitted uses.

.051 Retail and office type uses.

...

(7) ~~Marijuana-Cannabis~~ retail facilities, not greater than 2,500 square feet

Chapter 20.59 Rural General Commercial (RGC) District

20.59.050 Permitted uses.

.051 Retail and office type uses.

...

(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~~ cannabis retail facilities.

Chapter 20.71 Water Resource Protection Overlay District

20.71.200 Prohibited uses.

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.222 ~~Marijuana-Cannabis~~ production facilities.

Chapter 20.51 Lake Whatcom Watershed Overlay District

20.51.080 Prohibited uses.

...

.102 ~~Cannabis Marijuana~~ production or processing facilities.

Chapter 24.14, Smoking and Vaping in Public Places

24.14.030 Definitions and local supplemental definitions relative to Chapter 70.160 RCW.

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H. "Retail outlet" means a place of business in Whatcom County from which vapor products are sold to customers, but does not include any business licensed or endorsed for the sale of

recreational or medical ~~marijuana~~cannabis by the state of Washington and/or the Washington State Liquor and Cannabis Board.

- I. "Smoke" or "smoking" means the carrying, use or smoking of any kind of lighted, combustible, smoldering, or burning cigarette, pipe, cigar or other lighted smoking equipment including but not limited to tobacco, flavored tobacco products such as shisha, or ~~cannabis~~marijuana.

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