

Danielle Rosellison's Comments on the Proposed Marijuana Regulations, with PDS Responses

SECTION	VERBIAGE	NOTES	SUGGESTIONS	PDS Response
Staff Report II. Background. Paragraph 4.	The Prosecuting Attorney and PDS had at the time implemented a zoning interpretation policy, which stated that PDS would regulate marijuana proposed uses, as allowed by Initiative 502 in the same way as any other commodity that is grown, processed, or sold in Whatcom County.	Cannabis is a plant. Period. And thus should be treated as any other commodity grown, processed or sold in Whatcom County. This is an excellent interpretation of I-502 and I fully support this. We cannot lose sight of this!	Continue to treat the cannabis plant, all cannabis plants, like any other commodity that is grown, processed and sold in Whatcom County.	N/A, as the staff report is just background information.
Staff Report II. Background. Paragraph 7.	When Whatcom County's regulations were first adopted, the County Council chose to treat marijuana production like any other agricultural endeavor, as most of the applicants were small businesses.	The Council was wise to treat cannabis like any other agricultural endeavor. I would like to know what data was used to make the assumption that "more recently larger operators (with more capital) are buying up the earlier licenses and expanding operations or changing locations."	Please obtain the data from the WSLCB regarding the owners of 502 companies in Whatcom County. How many have changed ownership since license approval? How many are Whatcom County locals? How long have they lived	N/A, as the staff report is just background information.

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	<p>However, as no new state licenses are being issued it seems that more recently larger operators (with more capital) are buying up the earlier licenses and expanding operations or changing locations.</p>	<p>While I definitely agree that there is without a doubt at least one example of this, which is the main reason for complaints and the moratorium, but what does the actual data say? How many operations in Whatcom County are owned by Whatcom County residents? How many are "transplants" (for lack of a better term)? How many are originally Whatcom County locals but have expanded due to successful business plans? Don't we want to support those people? We don't want to punish all Whatcom County cannabis companies for the actions of a few bad actors.</p>	<p>in Whatcom County? How many moved to Whatcom County from other WA counties? All of this information is available with a public records request.</p>	
<p>Staff Report II. Background. Paragraph 8.</p>	<p>It should be noted that the majority of complaints arise from only a couple of Whatcom County producers; the majority of the operations are complying with the regulations and not causing problems.</p>	<p>With all due respect, it is not good policy to conservatively change the rules for everyone due to a few bad actors.</p>	<p>Find ways to address the bad actors without making the entire industry suffer.</p>	<p>N/A, as the staff report is just background information.</p>

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<p>Exhibit A – 20.69.704; 20.66.704; 20.68.700 Odor, dust, dirt, and smoke</p>	<p>(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.</p>	<p>There are a few concerns here: 1) "or smoke". Consuming cannabis on licensed premises is not allowed per WAC 314-55-015(12): Marijuana licensees may not allow the consumption of marijuana or marijuana-infused products on or within the licensed premises. Thus, by WCC Ordinance adding the word "smoke" what we are actually prohibiting is the burning of perishable waste. Is that really what we want? To not allow cannabis farmers to burn legally burnable material? 2) So much of this section is dependent on the neighbors, and basically whether they like or dislike cannabis. Is this normal nomenclature for all agriculture in Whatcom County? If not, why are we singling out cannabis? Do we have the same restrictions for hemp? Hemp is the same plant as marijuana; they smell EXACTLY the same. Cannabis is legal in WA</p>	<p>My suggestion is that you look at current hemp regulations and mimic them. I did a quick google search and couldn't find anything specific to hemp in Whatcom County.</p>	<p>The proposed language mimics other sections of code that limits public nuisances: No one should be able to cause a public nuisance. Furthermore, Whatcom County doesn't have hemp regulations.</p>

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		<p>State, as voted on by The People, and national legalization is around the corner. It is imperative that we make rules that treat cannabis like the agricultural commodity that it is, and not tie regulations to subjective opinions of the plant.</p>		
<p>Exhibit A – 20.80.690(1)(c)</p>	<p>Marijuana production and processing are not allowed as home occupations or cottage industries</p>	<p>Cannabis farmers are working diligently with the State Legislature to get the same rights as wine, beer and spirits. Is Whatcom County hurting themselves by prohibiting cannabis as a "cottage industry"?</p>	<p>Marijuana production and processing are not allowed as home occupations_ of cottage industries</p>	<p>Cottage industries are allowed in homes. Neighbors shouldn't have to worry that marijuana processing is going to be allowed in their neighbor's house. Marijuana specific regulations in this case supercede home occupation and cottage industry codes anyway so its not really a permitting option and the language is just trying to make that clear to the public.</p>

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Exhibit A – 20.80.690(2)(a)(i) & (ii)	<p>In the Rural district, production 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.</p> <p>(ii) In the Agriculture district, production and 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 facilities shall not exceed 2 acres.</p>	<p>When I read this (and 20.97.227) I understand it to mean, that if you parcel is less than 4.5 acres, you cannot have a structure larger than 2000 square feet nor can you grow more than 2000 square feet and if your parcel is 4.5 acres or larger, your facility can be 1-2 acres. Is that accurate? If so, that means if you have at least 4.5 acres, you can dedicate 43560 square feet to a building (or 22% of your property) while if you have 4.4 acres, you can only dedicate 2000 square feet to a building or grow (or 1%). That's a REALLY BIG DIFFERENCE. This will basically eradicate all grows, no matter the size from parcels that are less than 4.5 acres. Where did the idea that facilities can't be larger than 2000 square feet come from? The smallest cannabis license is a Tier 1, which is allowed to grow up to 4000 square feet of canopy. The largest license, a Tier 3, is</p>	<p>In the Rural district, production or processing facilities on parcels smaller than 4.5 acres shall not exceed a total of 2,000 square feet <u>of licensed canopy</u>.</p> <p>On lots of 4.5 acres or greater production and processing facilities shall not exceed 1 acre.</p> <p>(ii) In the Agriculture district, production and processing facilities on parcels smaller than 4.5 acres shall not exceed a total of 2,000 square feet <u>of licensed canopy</u>.</p> <p>On lots of 4.5 acres or greater processing and production facilities shall not exceed 2 acres.</p>	<p>This is the current rule. Furthermore, we can't regulate canopy. LCB regulates canopy but has struggled with varying interpretations. We regulate facility sizes for other types of uses, and this is in keeping with facility sizes for cottage industries.</p>

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		<p>allowed 30,000 square feet which is less than 1/4 of an acre. As mentioned in the "Whatcom County Planning & Development Services Staff Report", all cannabis farms, regardless if they are growing indoor, outdoor, hoop houses or greenhouses, need an indoor area to keep their moms alive for cloning. Where did this 2000 square foot facility come from? It feels arbitrary and capricious. Furthermore, production facilities need room for hallways, trimming, social distancing (due to COVID), and storage, to name a few. Cannabis farms need an area that is dry with good air flow to cure their product, which is normally done indoors. The definition of a production facility (20.97.227) acknowledges this additional processes needed indoors. If licenses are only allowed a 2000 square foot structure, where will the curing and other</p>		

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		<p>production tasks take place? I do not think 2000 square feet is enough space. Since I believe the intent for the 2000 square feet is for growing, I would suggest adding the words "of canopy" which is explained by the LCB in WAC 314-55-075(6) as "The maximum amount of space for marijuana production cannot exceed the amount licensed. Applicants must designate on their operating plan the size category of the production premises and the amount of actual square footage in their premises that will be designated as plant canopy."</p>		
Exhibit A – 20.80.690(2)(d)	Limit on Number of Licenses per Lot. In the Rural and Agriculture districts, only one Washington State Liquor and Cannabis Board	While I don't particularly like this section, if the goal is to keep big players away, this will likely do that. Since canopy is limited, and producer/processors can't own more than 3	no comment	

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	(WSLCB) marijuana production license may be used per legal lot (though may be combined with one processing license).	licenses, it is not economically viable as a business to not put all your licenses in one location.		
Exhibit A – 20.80.690(3)(a)(i) & (ii)	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	I love this. Light pollution is real.	No change.	

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Exhibit A – 20.80.690(3)(f)	<p>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:</p> <ul style="list-style-type: none"> (i) Short and straight line vent runs; (ii) Silencers and insulated vents, vent sleeves and mufflers; (iii) Acoustic 	<p>This seems like a serious overkill to me. At Trail Blazin, you can't hear anything from outside the facility and the only thing we implemented of i-ix was iv, fan speed controllers since most fans come with different settings.</p>	<p>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 and–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:</p> <ul style="list-style-type: none"> (i) Short and straight line vent runs; (ii) Silencers and insulated vents, vent sleeves and mufflers; (iii) Acoustic 	<p>Again, this is nuisance reduction, taken from San Juan County's code, which the P/C recommended we incorporate, as no one wants fan noise 24/7 from adjacent producers/ processors. We're glad that Trail Blazin' meets the requirement.</p>

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	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.		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.	
Exhibit A – 20.80.690(3)(g)(i)	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	Cannabis is a plant. Cannabis is agriculture. Agriculture smells. Period. To make rules stating that plants aren't allowed to smell is questionable. Who determines if it smells? How can the determiner tell if the terpene a-pinene that they smell is from the cannabis plant or the pine trees? How	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	Again, this is nuisance reduction. Odor was one of the main issues raised by the citizenry who complained to Council, which led to them placing this rewrite of the marijuana regulations on our work program. Furthermore, while the legalization of marijuana was voted on, the measure did not say that it would be treated as an agricultural product.

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	<p>facility in such a concentration or of such duration as to cause a public nuisance or threaten health or safety</p>	<p>can the determiner tell if the linalool is from lavender or cannabis? This seems REALLY subjective, and rides on the balance of whether your neighbors like or dislike the plant. The People of Washington voted to legalize (and that was deemed an essential business in WA during COVID). Furthermore, what are the rules for hemp? Hemp and cannabis are the same plant. They smell exactly the same. Does hemp have the same odor restrictions? Why or why not? These are important questions to ask before implementing these rules.</p>	<p>such duration as to cause a public nuisance or threaten health or safety.</p>	
<p>Exhibit A – 20.80.690(3)(g)(ii)</p>	<p>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</p>	<p>A quick review of The National Air and Filtration Association and I could not find any guidelines for cannabis, nor does it offer any guidelines for any agriculture at all. Furthermore, since it is a National association, and cannabis is still Federally illegal, it is possible that they will refuse to come up with</p>	<p>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</p>	<p>Again, this is nuisance reduction. Requiring an engineer's stamp on mechanical items is standard practice. This language was borrowed from Skagit County, another model the P/C recommended we use.</p> <p>The new language makes it clear as to what sort of technologies are required to be used to meet the standard but do not rule out improved technologies. This adds clarity for the applicant as well as professional freedom (flexibility) for the engineer.</p>

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	<p>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:</p>	<p>standards for cannabis. I also googled "National Air Exhibit A – Proposed Marijuana Code Amendments September 15, 2021" and came up with nothing.</p>	<p>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:</p>	
<p>Exhibit A – 20.97.010</p>	<p>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</p>	<p>The legislature of the state of WA decided that "cannabis is not considered agriculture for tax purposes. The 42nd district Rep. Vincent Buys argued against this saying it was a slippery slope to not call a plant a plant. Cannabis is a plant. Cannabis is agriculture. If it's not considered ag, what is it? As national legalization comes around in the near future, it is imperative that Whatcom County is</p>	<p>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</p>	<p>Based on state's declaration of same. We need to maintain consistency w/ state law. Whatcom County has been treating marijuana production as an agricultural type of use (meaning allowing outdoor grows of larger scale where odors cannot be adequately controlled), but that's what led to the complaints and Council's requesting the code update.</p>

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	of normal agricultural activities. However, the production of marijuana is not considered agriculture	set up for this. Stating that cannabis is not agriculture is going backwards, not forwards.	normal agricultural activities. However, the production of marijuana is not considered agriculture	
Exhibit A – 20.97.010.1	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	Same as above. This is not good policy.	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	Based on state's declaration of same. We need to maintain consistency w/ state law. Whatcom County has been treating marijuana production and processing as an agricultural type of use (meaning allowing outdoor grows of larger scale where odors cannot be adequately controlled), but that's what led to the complaints and Council's requesting the code update.

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	<p>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 marijuana is not considered agricultural processing.</p>		<p>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 marijuana is not considered agricultural processing.</p>	

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Exhibit A – 20.97.227	<p>“Marijuana production facility” means 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. A marijuana producer may also produce and sell marijuana plants, seed, and plant tissue culture to other state-licensed marijuana producers. The area of a marijuana 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 marijuana. Where limitations</p>	<p>So, if you're a Type 1, on less than 4.5 acres, you can only allocated up to 200 square feet to plant canopy indoors? That's not enough room to be successful. I would remove the 10% stipulation and allow the farmers to have up to 2000 square feet of canopy in their facility with "no flowering plants permitted in this area at any time"</p>	<p>“Marijuana production facility” means 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. A marijuana producer may also produce and sell marijuana plants, seed, and plant tissue culture to other state-licensed marijuana producers. The area of a marijuana 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 marijuana. Where limitations on size are imposed pursuant to §20.80.690, the</p>	<p>The 10% allowed is for overwintering plants, not growing. The idea is that Type 1 are "outdoor" grows (1 grow/season). If you want more grow cycles you need artificial lighting, which puts you into a Type 2.</p>

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	<p>on size are imposed pursuant to §20.80.690, the “facility” shall include all structures related to the production or processing of marijuana and any ground in which marijuana is grown. For the purposes of this code:</p> <p>A. “Type 1 Marijuana Outdoor Production Facilities” shall mean production may takes place outdoors, including in an expanse of open or cleared ground, or in non-rigid 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%</p>		<p>“facility” shall include all structures related to the production or processing of marijuana and any ground in which marijuana is grown. For the purposes of this code, Whatcom A. “Type 1 Marijuana Outdoor Production Facilities” shall mean production may takes place outdoors, including in an expanse of open or cleared ground, or in non-rigid 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 <u>2000 square feet of canopy</u> 10% of the total square footage of their allowed facility area to genetic preservation and plant</p>	

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	<p>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.</p> <p>B. "Indoor Type 2 Marijuana Production 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.</p>		<p>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 Marijuana Production 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.</p>	