



WHATCOM COUNTY PLANNING COMMISSION

5280 Northwest Drive
Bellingham WA 98226

AGENDA October 14, 2021

The Whatcom County Planning Commission will hold a **virtual*** meeting at 6:30 p.m., with staff located at the Northwest Annex Conference Room, 5280 Northwest Drive, Bellingham.

- Call to Order
- Roll Call
- Flag Salute
- Department Update
- Open Session for Public Comment
- Commissioner Comments
- Approval of Minutes of September 28, 2021
- Marijuana Code Amendments
 - Proposed amendments to WCC Title 20 (Zoning) regulating the production, processing, and retail sales of recreational marijuana in Whatcom County.
 - *Public Hearing and Work Session*
- Unfinished Business
- Adjournment

*** This is a virtual meeting only.**

Physical attendance is not permitted due to COVID-19 restrictions.

NOTE: For information on how to watch and participate in the meeting in real time, please visit the following web page: [Participate in Virtual Planning Commission Meeting](#)

Individuals who require special assistance to participate in the meetings are asked to contact "PDS_Planning_Commission@co.whatcom.wa.us" at least 96 hours in advance.

Upcoming Meeting Topics

- Buildable Lands Program Methodology
- Open Space Applications
- Repeal of Old Cherry Point Subarea Plan
- Wireless Code Amendments
- Misc Code Amendments

Pending Items Commissioners would like to address

Code related implications of climate modeling



**RECORD OF PROCEEDINGS OF THE
WHATCOM COUNTY PLANNING COMMISSION
September 23, 2021**

Work Session

1

1 **Call to Order**

2 The virtual meeting was called to order by Whatcom County Planning Commission
3 Chair, Kelvin Barton at 6:32 p.m.

4 **Roll Call**

5 **Present:** Robert Bartel, Kelvin Barton, Jim Hansen, Kimberley Lund, Dominic Mocerri,
6 Jon Maberry, Natalie McClendon

7 **Staff Present:** Cliff Strong, Charles Sullivan, Amy Keaton, Mark Personius, and
8 Tammy Axlund

9 **Absent:** Atul Deshmane, Stephen Jackson

10 **Department Update**

11 Mark Personius, Director of Planning and Development Services (PDS), reported that
12 the Planning Commission's recommendations for the following items are on next
13 week's County Council agenda: Capital Improvement Program amendments, battery
14 energy storage regulations, homeless facilities regulations, and continued review of the
15 Shoreline Management Plan update. He then provided an update on planned agenda
16 items for the next few Planning Commission meetings.

17 **Open Session Public Comment**

18 The following individuals provided public comment: Mark Ambler, Nick Cihlar, and
19 Joshua Rutherford

20 **Commissioner Comments**

21 Commissioner McClendon said the public participation questionnaire will go out next
22 week. She requested that commissioners share it with their social circles, in order to
23 get feedback from a broad selection of people.

24 **Approval of Meeting Minutes**

25 **Timestamp: 21:08**

26 **Commissioner Maberry moved** to approve the meeting minutes from September 9,
27 2021.

28 **Commissioner Lund seconded.**

29 **Roll Call Vote: Ayes-Barton, Hansen, Lund, Maberry, McClendon, Mocerri;**
30 **Abstain-Bartel; (Ayes-6; Nays-0; Abstain-1). The motion carried.**

31 **Proposed Marijuana Code Amendments**

32 **Timestamp: 22:20**

33 Cliff Strong, PDS Senior Planner, provided an overview of information in the agenda
34 packet, and presented new ideas proposed by staff as they continued to work on the
35 proposal between meetings. Commissioners discussed these items with staff and asked
36 clarifying questions. Commissioners asked questions of meeting attendees and invited
37 them to identify specific industry issues with the proposal.



**RECORD OF PROCEEDINGS OF THE
WHATCOM COUNTY PLANNING COMMISSION
September 23, 2021**

Work Session

2

1 **Timestamp: 2:35:49**

2 **Commissioner Hansen moved** to change the proposed rules to allow Type 2
3 operations in Rural Industrial and Manufacturing (RIM) zones only.

4 **Commissioner Lund seconded.**

5 After some discussion, **Commissioner Hansen withdrew his motion. Seconder,**
6 **Commissioner Lund agreed.**

7 **Timestamp: 2:39:21**

8 **Commissioner McClendon moved** to remove Type 2 as a permit facility type from
9 the ag zone.

10 **Commissioner Hansen seconded.**

11 **Roll Call Vote: Ayes-Bartel, Barton, Hansen, Lund, McClendon; Nays-Maberry,**
12 **Moceri; (Ayes-5; Nays-2; Abstain-0). The motion carried.**

13 Mr. Strong summarized the evening's discussion and clarified commissioner
14 expectations for the next the meeting. Staff will work on the requested items and bring
15 information back to the October 14th Planning Commission meeting.

16 **Adjournment**

17 The meeting was adjourned at 9:20 p.m.

18 Minutes prepared by Tammy Axlund.

19 WHATCOM COUNTY PLANNING COMMISSION ATTEST:

20

21 _____
Kelvin Barton, Chair

Tammy Axlund, Secretary

Whatcom County Planning & Development Services Staff Report

Proposed Amendments to WCC Title 20 (Zoning) Regulating the Production, Processing, and Retail Sales of Recreational Marijuana in Whatcom County

I. File Information

File #: PLN2021-00009

File Name: Marijuana Regulations

Project Summary: Proposed amendments to WCC Title 20 (Zoning) regulating the production, processing, and retail sales of recreational marijuana in Whatcom County.

Applicant: Whatcom County Planning and Development Services (PDS)

Location: Countywide.

Staff Recommendation: Approve

Attachments:

- Exhibit A – Proposed Amendments
- Memo from R. Buckingham, Attorney for Whatcom County, re: Supreme Court case of *Seven Hills v. Chelan County* per Chair's request

II. Background

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 marijuana producers, processors, and retailers to become licensed by the Washington State Liquor Control Board ("WSLCB").

On November 16, 2013, the WSLCB adopted final marijuana licensing rules as codified in Chapter 314-55 WAC. During the period between November 18, 2013 and December 20, 2013, the WSLCB accepted marijuana license applications for marijuana production, processing and retail facilities. Whatcom County began receiving notifications of proposed marijuana facilities from the WSLCB in mid-December, 2013, and the WSLCB anticipated issuing marijuana producer, processor, and retail licenses to qualified applicants starting in late February or March, 2014.

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.

During the licensing application window between November 18, 2013, and December 20, 2013, the WSLCB accepted approximately 228 recreational marijuana producer, processor and/or retail license applications for unincorporated Whatcom County. Whatcom County soon after began receiving notifications from the WSLCB of those applicants and applied to locations. 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. However, it became evident that many of those proposed locations could conflict with other surrounding uses.

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, retailers and medical marijuana collective gardens.

On March 31, 2015, the Whatcom County Council adopted Ordinance 2015-006, which contains the current County zoning regulations for recreational marijuana type uses. The regulations allowed for the production (as a permitted use) and processing (as an administrative approval use) of marijuana in the Rural, Rural Forestry, Agriculture, Rural Industrial and Manufacturing, Light Impact Industrial, and Heavy Impact Industrial districts, subject to a proposed facility meeting several stated use standards. Such standards include odor controls (for indoor grows), 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.

When Whatcom County's regulations were first adopted, the County Council chose to treat marijuana growing like any other agricultural endeavor, as most of the applicants were small businesses. 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.

Earlier this year both the Commission and the Council received numerous complaints from citizens neighboring certain of the marijuana production and processing facilities. Issues raised included odor, lighting, and excessive water usage. As of 4/27/2021, there were 2 licensed (only) producers, 4 licensed (only) processors, 29 licensed (combo) producers/processors, and 12 licensed retailers of marijuana in unincorporated Whatcom County (see attached map, which also indicates how many are in each zoning district). The majority of complaints arise from only a couple of these; it should be noted that the majority of the operations are complying with the regulations and not causing problems.

Based on those citizen complaints, the Planning Commission recommended, and the Council adopted, an interim 6-month moratorium on accepting applications for outdoor marijuana production and/or processing facilities (Ord. 2021-018, 4/6/21). On April 20th the Council expanded that moratorium to further clarify that "outdoors" for purposes of the moratorium includes production on open land; in non-rigid greenhouses (i.e., hoop houses); in greenhouses with rigid walls, a roof, and doors; and similar type greenhouse structures (Ord 2021-023). The moratorium, unless extended, expires on November 7, 2021.

The Council also placed on the County's annual docket PLN2021-00009, directing Planning and Development Services (PDS) 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."

Thus, the Planning Commission has now held two public workshops and with staff assistance has developed the proposed amendments to the County's recreational marijuana land use regulations discussed below.

III. Proposed Amendments

The proposed amendments are found in Exhibit A. Please refer to that attachment; explanations are provided therein. Table 1, below, also provides a summary of the proposed regulations. Following, however, is a list of proposed policy changes.

“Marijuana Production Facilities” Definition

The terms “outdoor” and “indoor” production facilities are being relabeled as Type 1 and Type 2 Marijuana Production Facilities. The reason is that the difference between outdoor and indoor in terms of structure type is confusing, given that greenhouses and other such structures are a little of both. What seems to really matter—in terms of how many grow cycles one can obtain, and thus how often flowering marijuana produces the objectionable odor—is whether artificial lighting is used to aid in the growth cycle. Testimony from producers indicated that without artificial lighting a producer can only obtain one growth cycle here in Whatcom County.

One proviso is that producers have commented that even if they are small scale and don’t use artificial lighting for most production they still need at least one small structure (a.k.a, “headhouse” or “mother room”) in which they can overwinter¹ the plants. So the proposed definition of a Type 1 facility would allow one small structure with artificial lighting for overwintering plants. At the last workshop, staff was unsure as to what the size of such a structure should be, but we have had conversations with producers since, and it seems that limiting them to 10% of the of the total square footage of their allowed facility area should suffice. Such language has been added to the definition. (§20.97.227)

Locations for Type 1 (“Outdoor”) vs. Type 2 (“Indoor”) Production

The Planning Commission is averse to prohibiting outdoor production entirely, in particular because it uses less energy and is less costly for small start-ups. But they do want to limit the size of outdoor production in the zones that typically have more residential uses (i.e., Rural and Agriculture) as one way to reduce odor impacts (most odor complaints have arisen around the larger (Tier 3) hybrid² facilities in the Rural district).

Thus, the draft regulations propose to:

- a) Allow Type 1 facilities only in the Rural and Agricultural districts and limit the area of production facilities to a maximum of 1 and 2 acres, respectively, (§20.80.690(2)(a)); and
- b) Allow Type 2 facilities only in the Rural (with a facility size limit of 1 acre) and industrial (RIM, LII, & HII) districts (with no facility size limit).

(Note: Lot coverage standards for each district also place a limit on the total square footage of structures on a lot commensurate with the lot size.)

Use and Permit Requirements

As a way to further reduce externalities the Commission wants to require permits that have more public process. Thus, rather than being a Permitted use in most zones as they are currently, the following is proposed:

¹ According to one knowledgeable producer overwintering plants is part, but only part, of the purpose of the headhouse. Their primary purposes are 1) the preservation of genetics and 2) the propagation of new plants.

² Moving plants between and using both artificial and natural lighting (or indoor and outdoor) so as to achieve more growing cycles.

- In the Rural and Agriculture districts Type 1 production and processing should be an Administrative Approval Use (requiring public notice, written comments, and decision by staff);
- In the Rural district Type 2 production should be a Conditional Use (requiring public notice and a public hearing and decision by the Hearing Examiner).
- In the Rural Industrial and Manufacturing, Light Impact Industrial, and Heavy Impact Industrial districts Type 1 production should not be allowed (as these zones are intended for industrial type development and higher wage job creation) but Type 2 production and processing should be allowed as a Permitted Use.
- Additionally, neither marijuana production nor processing should be allowed in the Rural Forestry district, as this zone is intended to protect such lands for forest production and forestry jobs. Currently there are no production or processing facilities located in this district.

Lighting

One of the other externalities from outdoor grow operations people have complained about is the excessive lighting coming from grow lights in transparent and semi-transparent structures (i.e., green- and hoop-houses). Additionally, growing seasons can be extended to up to 3-4 cycles by using artificial lighting, extending the odiferous periods significantly.

For outdoor fixtures (security lights, etc.), lighting impacts can be mitigated by requiring the installation and use of down-shielding. For facilities using artificial lighting in their growth cycles, lighting impacts can be mitigated by requiring the installation and use of blackout shades. Such language has been included in the draft amendments (§20.80.690(3)(a)).

Odor

Odor from Type 2 (“indoor”) production can be controlled through the installation and use of ventilation and odor control systems, and such language has been included in the draft amendments (§20.80.690(3)(g)(ii)). And though we have also included language stating that odor from any production facility cannot be detectable at or beyond the property boundaries at a level that causes a public nuisance (§20.80.690(3)(g)(i)), odor from Type 1 facilities cannot be controlled the same as with Type 2 production facilities. However, it is understood that Type 1 production can generally only obtain one growth cycle, so the time and duration of odors from these facilities should be limited. Additionally, it can be significantly reduced in time and duration through the other regulations the Commission is considering as discussed herein.

Limit on Number of LCB Licenses per Lot

As a way of preventing multiple businesses from operating on the same lot or from one business buying additional LCB licenses and stacking multiple licenses to create larger scale, more intensive operations, the Commission proposes to limit operations to one production and/or processing license(s) per lot in the more residential districts. Thus, such language has been included in the draft regulations for the Rural and Agriculture districts. (§20.80.690(2)(d))

Setbacks/Separation Requirements

Currently production in the Rural, Rural Forestry, and Agriculture districts requires a 1,000' separation (measured from property lines) from community centers³ and a 300' setback (measured from structures) from existing off-site residences⁴. For processing we have the same rule in the Rural district, but only the 300' setback from residences in the Rural Forestry district, and the 1,000' setback from community centers in the Agricultural district. The Commission expressed no interest in modifying the existing setback and separation requirements so the existing ones have been carried over into the proposed amendments. (§20.80.690(2)(b))

But upon further consideration of some of the public comments the Commission has received, we now propose that there be a separation between production facilities so that one particular neighborhood doesn't all end up with several. Thus, we have added language requiring a separation of 1,000 feet between such facilities. (§20.80.690(2)(c))

Processing Facilities that Use Hazardous Materials

The Commission agreed that processing facilities that use hazardous materials should only be allowed in the industrial districts. Such language has been included in the draft amendments (§20.80.690(2)(f)). Currently there are no such facilities in the rural districts, as adequate fire flow is necessary and can't be obtained without major investment. Thus, this change shouldn't affect any existing processors.

Nonconforming Rules

The Commission agreed that production and processing facilities made nonconforming by revisions to the marijuana regulations should be able to continue (as are all nonconforming uses under the County code), but not be able to expand (by any significant amount) or change to another nonconforming use. Thus we have included language to this effect (§20.80.690(1)(e)).

IV. Comprehensive Plan Evaluation

The proposed amendments to WCC Title 20 (Zoning) have been developed using the guidance of the Comprehensive Plan so as to remain consistent. Though there are no policies regarding marijuana production or processing, the following support the proposed amendments:

Policy 2DD-2: Protect the character of the rural area through the County's development regulations.

(Supports limiting the size, location, and types of marijuana production facilities in the rural areas so as to reduce externalities)

Policy 2FF-2: Support resource-based industries that require only rural services, conserve the natural resource land base, and help maintain the rural character and lifestyle of the community. Assure adequate facilities, mitigation and buffers through development regulations.

³ Defined in Title 20 as "land and/or building(s) owned by a public agency or private nonprofit entity used for social, civic, educational, religious, or recreational purposes, which serves mainly the community where located; including but not limited to community halls and centers, grange halls, senior citizen centers, teen centers, youth clubs, field houses, and churches. The facilities are available for occasional public meetings. They may also have the minimal kitchen facilities required for occasional banquets. Private clubs as defined in this title are not included."

⁴ This 300' setback was taken from our manure lagoon regulations (WCC 20.80.225(2)) as a way to reduce odor impacts.

(Supports eliminating marijuana production and processing facilities as an allowed use in the Rural Forestry district.)

V. Draft Findings of Fact and Reasons for Action

Staff recommends the Planning Commission adopt the following findings of fact and reasons for action:

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 X , 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.

VI. Proposed Conclusions

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

VII. Recommendation

Planning and Development Services recommends the Planning Commission forward the proposed amendments to the County Council with a recommendation of approval.

Table 1. Summary of Proposed Marijuana Rules

Type	Zone Requirements			Supplemental Requirements										
	Zone	Facility/Permit Type	Lot Coverage ¹	Facility Size Restrictions	Separation of Facilities	Accessory Use	Separation	# of Licenses	Hazardous Materials	Screening	Odor	Lighting	Noise	Other
Production	R	Type 1 – ADM	No structure or combination of structures shall occupy or cover more than 5,000 square feet or 20%, whichever is greater, of the total lot area, not to exceed 25,000 square feet. (§20.36.450)	For parcels < 4.5 ac production or processing facilities limited to 2,000 sf For parcels ≥ 4.5 ac production facility limited to 1 ac Also limited by lot coverage restrictions	Not w/in 1,000' of another production facility		Not w/in 1,000' of a community center or 300' of an offsite residence ²	1 production and/or 1 processing license per lot	N/A	Consistent with WCC 20.80.345 (Buffer Plantings).	Must install engineered odor control system; no VOCs shall be emitted that is detectable at or beyond the property boundaries	Light fixtures shall be designed and down-shielded away from adjoining properties, critical areas, shorelines, and public roads. Indoor lights must use blackout shades. 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	Shall comply with WCC 20.80.620 (Noise), and have a mechanical engineer design the noise control system	Must also comply with security, water, waste disposal, and parking standards
		Type 2 – CUP												
	AG	Type 1 – ADM	No structure or combination of structures, including accessory buildings, shall occupy or cover more than 25% of the total area of the subject parcel... (§20.40.450)	For parcels < 4.5 ac production facility limited to 2,000 sf For parcels ≥ 4.5 ac production facility limited to 2 ac Also limited by lot coverage restrictions										
	RIM	Type 2 – P	In a rural community designation, combined floor area of all buildings shall not exceed that of a use of the same type that existed on a lot in that same rural community designation on July 1, 1990. (§20.69.451) In a rural business designation, building or structural coverage of a lot shall not exceed 50% of the total area. (§20.69.452)											
	LII	Type 2 – P	The maximum building coverage shall not exceed 60% of the lot size. (§20.66.450)											
	HII (ADM)	Type 2 – P	The maximum building or structural coverage shall not exceed 60% of the lot size. (§20.68.450)											
Processing	R	ADM	Same as for production, above	For parcels < 4.5 ac processing & production area limited to 2,000 sf		Must be accessory to production	Not w/in 1,000' of a community center or 300' of an offsite residence ²	1 production and/or 1 processing license per lot	Not allowed					
	AG	ADM												
	RIM	P												
	LII	P												
	HII	P												
Retail	STC	P		Limited to 2,500 sf										
	NC	P												
	RGC	P												
	GC	P												

¹ Though not a specific marijuana facility regulation, these rules apply to all hard surfaces, including structures and would limit the size of structures commensurate with the lot size.

Exhibit A – Proposed Marijuana Code Amendments

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** Marijuana 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:~~

- ~~(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.~~
- ~~(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.~~
- ~~(3) 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 **Marijuana 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:**~~

~~The facility is accessory to the on-site production of marijuana.~~

~~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.~~

~~On parcels smaller than four and one half 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 the ordinance codified in this section.~~

20.36.150 Conditional uses.

...

~~.160 Type 2 Marijuana 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:~~

~~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.~~

~~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:~~

- ~~(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.~~

20.40.130 Administrative approval uses.

...

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

~~.141 Marijuana 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:~~

~~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.~~

~~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:~~

~~The facility is accessory to the on-site production of marijuana.~~

~~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 M~~marijuana production facilities, subject to WCC 20.80.690.

(18) Marijuana 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 production or processing facilities, odor shall be regulated pursuant to WCC 20.80.690(3)(g).

~~20.69.708 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.~~

Comment [CES1]: Now covered by 20.80.690(3)(g).

Chapter 20.66 LIGHT IMPACT INDUSTRIAL (LI) 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 Production or Processing Facilities, subject to WCC 20.80.690.~~

~~.088 Marijuana 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 production or processing facilities, odor shall be regulated pursuant to WCC 20.80.690(3)(g).~~

~~**20.66.709 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.~~

Comment [CES2]: Now covered by 20.80.690(3)(g).

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 Marijuana Production or Processing Facilities, subject to WCC 20.80.690.~~

~~.067 Marijuana 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 marijuana production or processing facilities, odor shall be regulated pursuant to WCC 20.80.690(3)(g).

...

~~20.68.709 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.~~

Comment [CES3]: Now covered by 20.80.690(3)(g).

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.~~

Comment [CES4]: Now covered by 20.80.690(1)(a).

~~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.~~

Comment [CES5]: Now covered by 20.80.690(1)(a).

~~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.~~

Comment [CES6]: Now covered by 20.80.690(3)(g).

(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.~~

Comment [CES7]: Now covered by 20.80.690(3)(a).

- (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.~~

Comment [CES8]: Staff believes we don't need this. Firstly, there's no way to judge what "greater volume than would normally be expected." Secondly, no production facility, with normally only a few employees and no customers coming to the site, would create an inordinate amount of traffic.

Comment [CES9]: Now covered by 20.80.690(3)(d).

Comment [CES10]: Now covered by 20.80.690(3)(b).

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.~~

Comment [CES11]: Not needed. Was originally included when we were treating marijuana as an agricultural product, and this mimics the language for ag processing

Comment [CES12]: Now covered by 20.80.690(3)(g).

Comment [CES13]: Now covered by 20.80.690(3)(a).

Comment [CES14]: Staff believes we don't need this. Firstly, there's no way to judge what "greater volume than would normally be expected." Secondly, no production facility, with normally only a few employees and no customers coming to the site, would create an inordinate amount of traffic.

Comment [CES15]: Now covered by 20.80.690(3)(h).

20.80.690 Marijuana – Production and Processing Facilities.

- (1) **General.** Marijuana 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 marijuana license for the subject property prior to issuance of the County's certificate of occupancy for buildings proposed for marijuana 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, marijuana production and processing shall not take place in a residence or other location where law enforcement access, without notice or cause, is limited.
 - c. Marijuana production and processing are not allowed as home occupations or cottage industries.
 - d. Marijuana 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 marijuana facilities legally existing as of INSERT DATE OF ADOPTION OF THESE RULES that, due to noncompliance with these standards,

Comment [CES16]: Note to Cliff: Fill in upon adoption

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 marijuana 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 marijuana 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 marijuana production or processing facilities shall not be able to change to another nonconforming use.

(2) District Specific Standards.

a. Facility Size –

(i) 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.

(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.

b. Separation of Uses – In the Rural and Agriculture districts, no facility shall be located within 1,000 feet of a community center 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 marijuana 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) marijuana 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 – Marijuana 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.

Comment [CES17]: Defined in T-20 as, "Community center" means land and/or building(s) owned by a public agency or private nonprofit entity used for social, civic, educational, religious, or recreational purposes, which serves mainly the community where located; including but not limited to community halls and centers, grange halls, senior citizen centers, teen centers, youth clubs, field houses, and churches. The facilities are available for occasional public meetings. They may also have the minimal kitchen facilities required for occasional banquets. Private clubs as defined in this title are not included."

(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 – Marijuana 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 marijuana 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.
 - (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 Marijuana Production Facilities.

20.80.691 Marijuana – Retail Sales Facilities.

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

1. The WSLCB must approve a marijuana retail sales license for the subject property prior to issuance of the County's certificate of occupancy for buildings proposed for marijuana 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, marijuana retail sales shall not take place in a residence or other location where law enforcement access, without notice or cause, is limited. Marijuana 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 marijuana 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.~~

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 marijuana is not considered agricultural processing.~~

20.97.225 Marijuana, ~~marihuana or cannabis.~~

“Marijuana,” ~~(a.k.a., “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 facility” means a facility licensed by the state Liquor and Cannabis Board to process marijuana into useable marijuana, marijuana concentrates, 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 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 “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 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 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.~~

20.97.228 Marijuana retail facility.

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

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Kimberly Thulin
Hilary Thomas

ADMINISTRATOR

Louise Trapp

October 5, 2021

To: Planning Commission
From: Royce Buckingham, Attorney for Whatcom County
re: Marijuana moratorium case.

Commissioners,

The recent Supreme Court case of *Seven Hills v. Chelan County* reaffirms the principle that vested rights allow a marijuana facility that has applied for permits to continue operating if a subsequent moratorium or change in the law bars new marijuana facilities. Previously established (by application) facilities become valid nonconforming uses.

Though the timeline and permitting history in the case are complex and confusing, the following excerpted italicized quotes from the case summarize the holding well.

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

No. 98730-1

Filed: September 23, 2021

SEVEN HILLS, LLC, a Washington limited liability company; and WATER WORKS PROPERTIES, LLC, a Washington limited liability company,

Petitioners,

v.

CHELAN COUNTY, a municipal corporation,

Respondent.

In 2014, Seven Hills LLC began developing a cannabis production and processing business in Chelan County, Washington.

After Seven Hills procured the relevant permits and began building on its property, Chelan County (County) passed Resolution 2015-94, which placed a moratorium on siting new cannabis related businesses.

While the moratorium was in place, Seven Hills received the necessary state licenses and began operating its cannabis production and processing

Shortly thereafter, the County passed Resolution 2016-14, which changed the relevant ordinances resulting in the barring of new cannabis-related businesses.

...

We hold that the County's resolution declaring a moratorium on siting new cannabis production and processing activities did not amend or replace existing zoning ordinances, and that Seven Hills established a nonconforming use prior to adoption of Resolution 2016-14.

We hold that Resolution 2016-14 did amend the County's ordinances defining agricultural use, but did not retroactively extinguish vested rights.

The bottom line is contained in the following quote from the case: "...a county may not change the rules applicable to an already submitted application. *Matson*, 79 Wn. App. at 648-49." This is a basic land use principle, and it was simply reaffirmed by the *Seven Hills v. Chelan* case.

Sincerely,

/s/ Royce Buckingham

Royce Buckingham

Attorney for Whatcom County

rbucking@co.whatcom.wa.us