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**Mark Personius**  
Director

## Memorandum

DATE: February 16, 2021  
TO: Planning Commission  
FROM: Cliff Strong, Senior Planner  
THROUGH: Mark Personius, Director  
RE: Information on Marijuana Production and Processing Regulations

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### **Purpose**

At your February 11<sup>th</sup> meeting, the Commission heard from several citizens asking for a moratorium on the acceptance of new applications for marijuana production and processing facilities, and a review and refinement of our regulations. The speakers testified to the negative impacts such uses were having on (their) surrounding properties. They also pointed to both Skagit and San Juan Counties as having recently imposed such moratoria whilst they develop their regulations.

The Commission asked that this issue be placed on the February 25, 2021 meeting agenda so that they could explore whether they should request that the Council do so.

### **Background**

#### **State**

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

#### **Whatcom County**

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 (permitted use) and processing (administrative 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.

### **San Juan County**

In early 2019, San Juan County did not have regulations regarding the production or processing of marijuana, but someone was interested in locating one in their jurisdiction. To provide them time to develop such regulations they enacted a moratorium on April 2, 2019, prior to this (or any other) application being submitted. Resolution No. 15-2019 placed a six-month moratorium on such operations, which was renewed for six months beginning on October 2, 2019, in Resolution No. 34-2019. On August 25, 2020 they adopted such regulations via Ordinance 11-2020.

### **Skagit County**

On March 3, 2015, the Board of County Commissioners adopted an interim ordinance regulating marijuana production, processing, and retail facilities and directing the Department to prepare a proposal for permanent regulations governing marijuana facilities. The Board of County Commissioners adopted new permanent regulations on marijuana facilities on August 3, 2015, replacing all prior regulations.

### **Analysis**

It seems like all three (and probably most) jurisdictions took the same path, just on slightly different schedules. When the state law first passed, no jurisdictions had marijuana regulations in place and all cities and counties had to scramble to address the issue. Whatcom County developed their regulations prior to the other two referenced jurisdictions. In 2014, 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 lately we're getting larger operators (with more capital) buying up the earlier licenses and expanding operations or changing locations.

All three sets of regulations (attached) seem to address the same potential impacts. San Juan County's do seem a little more detailed, probably because they developed later and had models and experiences from other jurisdictions.

One of the more notable differences between Whatcom and Skagit is that Skagit County does not allow outdoor grow operations (where "outdoor" includes greenhouses and hoop-houses). We do allow outdoor grows, but because our regulations were intended to treat those uses similar to other outdoor agricultural activities the code does not regulate and we cannot control odors emanating beyond their property boundaries. It appears that the recent complaints are about such outdoor grow operations and not indoor operations. It should be noted that there are numerous legal indoor operations that are complying with our regulations, and not causing a problem, and that perhaps these should not be included in a moratorium, if enacted.

### **Potential Motion**

If the Planning Commission is interested and so chooses to recommend a moratorium on acceptance of new marijuana growing and processing applications to the County Council, such a motion could state:

- *Due to concerns raised by the public regarding off-site impacts (e.g., odors, lighting, and potentially excessive water use) from outdoor marijuana growing and processing operations, the Planning Commission recommends the County Council consider implementing an emergency moratorium on*

*acceptance of applications for outdoor marijuana growing and processing operations and work with PDS to revise those regulations to address the public concerns.*

## Comparison of Regulations

### Whatcom County

#### **20.80.690 Marijuana production and processing.**

##### **20.80.691 Marijuana state license required.**

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

##### **20.80.692 Application for county development permits – Timing.**

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

##### **20.80.693 Production.**

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

##### **20.80.694 Processing.**

- (1) The facility employs no more than 10 permanent employees, except that in the Agriculture and Rural Forestry Zones the facility may employ no more than 20 employees.
- (2) For indoor facilities, no odor or smoke shall be emitted that is detectable at or beyond the walls of the facility, in such a concentration or of such duration as to cause a public nuisance, or threaten health or safety, or to unreasonably infringe upon the use and enjoyment of neighboring use. The applicant shall install an exhaust system that is designed and constructed to capture sources of contaminants to prevent

spreading of contaminants or odors to other occupied parts of the building or surrounding area. The system must be designed by a licensed Washington State professional engineer.

- (3) Any lights used to illuminate the facility shall be so arranged as to direct the light away from the adjoining property and the public road.
- (4) No traffic shall be generated by such a facility in greater volume than would normally be expected in the applicable zoning district and appropriate for the road classification which serves the property.
- (5) Any need for parking generated by the conduct of such a facility shall meet the off-street parking requirements as specified in this title. At least one additional space shall be provided for each nonresident on-site employee.

### **San Juan County**

In early 2019, San Juan County did not have regulations regarding the production or processing of marijuana, but someone was interested in locating one in their jurisdiction. To provide them time to develop such regulations they enacted a moratorium on 4/2/19, prior to this (or any other) application being submitted. Resolution No. 15-2019 placed a six-month moratorium on such operations, which was renewed for six months beginning on October 2, 2019, in Resolution No. 34-2019. On August 25, 2020 they such regulations via Ordinance 11-2020. These are:

#### **18.40.292 Marijuana production and processing – General.**

Marijuana producers and processors must comply with RCW Title 69, Chapter 314-55 WAC and the general standards below.

- A. On parcels located outside of UGAs, only one Washington State Liquor and Cannabis Board (WSLCB) marijuana license may be used.
- B. The WSLCB must approve a marijuana license for the subject property prior to issuance of the County's certificate of final occupancy for buildings proposed for marijuana production or processing.
- C. For purposes of SJCC Title 18, marijuana is not an agricultural product. SJCC Title 18 and other County agricultural regulations and programs such as the voluntary stewardship program do not apply to marijuana production, processing, or retail sales.
- D. 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.
- E. Marijuana production and processing are not allowed as home occupations or cottage industries.
- F. Marijuana production and processing operations may not be located in critical areas and their buffers, or in shoreline jurisdictions.

#### **18.40.294 Marijuana production and processing – Rural and AG resource land siting standards.**

The following siting standards apply to marijuana production and processing in the rural and AG resources land use designations:

- A. In the AG resource designation, indoor marijuana production and processing is only allowed in structures existing or that have complete building permits vested on September 4, 2020. The expansion of existing structures in these designations for the purpose of marijuana production or processing is prohibited.
- B. Marijuana production (indoor or outdoor) and processing structures shall be set back 300 feet from property lines.
- C. Marijuana production (indoor or outdoor) and processing structures shall be set back 500 feet from existing residences located outside of the subject property. An existing residence is one that:

1. Was legally constructed; or
2. Has a building permit application that vested prior to the submittal of the complete conditional use permit application for a marijuana operation.

**18.40.296 Marijuana production and processing – Performance standards.**

Structures used for marijuana production or processing and outdoor production operations shall comply with the standards in SJCC Title 18 and this section. Unless specifically provided otherwise, if the provisions of those standards conflict with other applicable state or local policies, subarea plans, or other regulations, the most restrictive regulation controls.

- A. Fixtures illuminating production or processing operations shall direct light away from adjoining properties, critical areas, shorelines and public roads consistent with SJCC 18.60.170 and Chapter 18.35 SJCC.
- B. The landscaping requirements of SJCC 18.60.160 apply. In addition, a Type A landscaping screen described in SJCC 18.60.160(D)(1) is required to surround indoor production or processing facilities and outdoor production operations. The landscaping screen shall be located outside of the state’s required security fence to provide a visual barrier. Upon submittal of a written request, the director may authorize modifications to the landscaping requirements of this section and may place conditions on a permit as needed to accommodate the modification. When considering the request for a landscape modification, the director may consider:
  1. Physical circumstances or constraints of the property and surrounding area such as site topography and soils;
  2. Alternative plants and trees that would accomplish the purposes of the required landscaping;
  3. Flexibility in the size of initial plantings;
  4. Existing vegetative buffers or physical barriers that meet the intent of the Type A landscaping screen; and
  5. The need for the landscaping based on existing uses and development.
- C. Producers and processors shall install the security requirements of WAC 314-55-083 prior to issuance of the County’s occupancy permit for a marijuana operation.
- D. 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.
- E. Permit applications shall include documentation of compliance with the water system requirements of SJCC 18.60.020 and waste disposal regulations in WAC 314-55-097, SJCC 18.60.030 and Chapter 8.14 SJCC.
- F. Producers and processors shall comply with Chapter 9.06 SJCC. Fan noise from their operations shall be minimized. A mechanical engineer licensed in the state of Washington shall design the noise control system using standard industry practices such as installing fans with components listed by Underwriters Laboratories (UL) and a combination of the following techniques and components:
  1. Short and straight line vent runs;
  2. Silencers and insulated vents, vent sleeves and mufflers;
  3. Acoustic ducting;
  4. Fan speed controllers;
  5. Soundproofing boxes;
  6. Sound-muffling casing;

7. Padded foam cushions under the fans;
  8. Intelligent programming motors and controllers; and
  9. Hanging fans hung from bungee cords from hooks in ceiling.
- G. Producers and processors shall use filters on exhaust air prior to dispersal.
- H. Producers and processors shall minimize the odors emitted from structures by using best management practices and technology. A mechanical engineer licensed in the state of Washington shall design the odor control system using guidance from the National Air Filtration Association. The odor control plan must incorporate a combination of the following site design practices, tools, or other newly improved technologies to mitigate odors:
1. Placement of operations after consideration of predominant wind directions;
  2. Installation of additional vegetative buffers around grow areas;
  3. Reduction of passive odor escapes by tightening and sealing structures;
  4. Use of negative pressure techniques and air locks to reduce odors from escaping when doors open;
  5. Use of chillers that move water around the structure and leave air in place instead of air conditioning;
  6. Installation of carbon filter scrubbers to heating, ventilation and air conditioning systems;
  7. Installation of dry vapor systems;
  8. Installation of ionizers;
  9. Use of mini-vapor screens on the interior, and Vapormatic and vapor screens on the exterior of structures;
  10. Installation of a piping system on perimeter fencing that neutralizes malodorous molecules;
  11. Installation of a gas phase filtration system; and
  12. Installation of a fog system to disperse mixed water- and odor-neutralizing chemicals.
- I. Traffic impacts to public and private roads in the rural and natural resource land use designations shall be limited. Only traffic intensities identified as low-level impacts in SJCC 18.80.090, Table 8.2, shall be allowed on private roads. Only traffic intensities identified as having medium-level impacts in SJCC 18.80.090, Table 8.2, shall be allowed on public roads. The administrator may consult with the County engineer and recommend permit conditions needed to address public road impacts such as requiring continuing maintenance.

## **Skagit County**

### **14.16.855 Marijuana and marijuana facilities.**

- (1) When Allowed.
- (a) Marijuana facilities are allowed only where explicitly identified in this Chapter; except that in municipal UGAs where a municipality's development regulations apply, a marijuana facility must comply with the municipality's development regulations instead of this Section.
  - (b) Marijuana processing using hazardous or flammable solvents or gases is allowed only in BR-HI, only in a marijuana processing facility, and only in a professional-grade closed-loop extraction system that is designed to recover the chemicals and that is labeled for such use by the manufacturer.
  - (c) Growing medical marijuana at home by individuals, when done consistent with State law, is allowed in all zones.
  - (d) The following uses and activities are explicitly prohibited in all zones:
    - i. Outdoor growing of marijuana.

- ii. Marijuana production or processing in a greenhouse or any translucent structure.
  - iii. Marijuana cooperatives and collective gardens.
  - iv. Any growing or processing of marijuana or keeping marijuana plants when not in compliance with State law governing the growing of medical marijuana at home or without a current license from the State Liquor and Cannabis Board.
  - v. Any storage or growing of plants if any portion of such activity can be readily seen by normal unaided vision or readily smelled from a public place or the private property of another housing unit.
- (2) Characterization. Marijuana production and processing is an industrial use, not an agricultural use.
- (3) Requirements for All Marijuana Facilities.
- (a) A marijuana production or processing facility must employ ventilation systems such that no odors from the production or processing are detectable off the premises.
  - (b) A marijuana facility that employs security cameras must aim those cameras so as to view only the facility property, not public rights-of-way or neighboring properties.
  - (c) The Fire Marshal must notify the local fire district or other fire authority whenever the Department approves a permit for any marijuana production or processing facility.
- (4) A special use permit for a marijuana production/processing facility must:
- (a) Be conditioned on holding a current license from the State Liquor and Cannabis Board;
  - (b) Address impacts on surrounding properties, including but not limited to the appropriate distance of the facility from residences, schools, daycare facilities, public parks, other public facilities, and other marijuana facilities;
  - (c) Include appropriate controls on odor;
  - (d) Include appropriate screening or other requirements to avoid lighting impacts and the visual impacts of security fencing;
  - (e) Include requirements for appropriate disposal of the waste and byproducts of production and processing;
  - (f) Include protections against security cameras infringing on neighbors' privacy;
  - (g) Include any additional controls on hazardous processing methods with potential to injure neighboring properties;
  - (h) Mitigate other impacts.
- (5) A special use permit for a marijuana retail facility must:
- (a) Be conditioned on holding a current license from the State Liquor and Cannabis Board;
  - (b) Include appropriate conditions to avoid customer use of marijuana on site or in adjacent areas (e.g., security cameras, fences, or site design);
  - (c) Mitigate other impacts.