



Memorandum

DATE: August 30, 2021
TO: Planning Commission
FROM: Cliff Strong, Senior Planner
THROUGH: Mark Personius, Director
RE: Policy Questions in Preparation of Marijuana Regulations Amendments

Purpose

On September 9th the Planning Commission will hold a workshop on proposed amendments to the County's recreational marijuana production and processing regulations (Title 20, Zoning, §20.80.690 to .694, and Chapter 20.97, Definitions). The purpose of the workshop is to discuss with the Commission some policy questions so as to provide guidance in developing the amendments. We anticipate that the Commission will hold one more workshop on September 23rd to review the draft amendments, and then hold a public hearing on October 14th.

Background

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). 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.

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."

Since then, staff has been reviewing state law and other jurisdictions' regulations and considering how best to address the citizens' concerns. However, there appears to be no uniform "right way" (or model ordinances or even WAC standards) to regulate marijuana production and processing and each jurisdiction has taken a different tack. When Whatcom County first adopted its regulations (one of the first in the state), Council chose to treat it like other agricultural products. Other jurisdictions, having the gift of others' experiences, now treat it as more of a commercial or industrial use, with stricter standards.

Current Regulatory Schema

Washington State regulates the production, processing, and retailing of cannabis through licensing, primarily to ensure that the market remains stable and that taxes are properly paid¹. For production, there are three license tiers, relating to the size of the canopy area one's plants may cover (see questions 1.c, below), which directly relates to the quantity of final product one can produce. There is a limit on the number of licenses² the Liquor & Cannabis Board (LCB) can issue and currently all have been issued in the state³. Land use regulations, however, are left to the individual jurisdictions in which they're located.

Whatcom County's current marijuana regulations are found starting on page 8 of this memo, with a summary in chart form on page 15. You'll see that each of the zoning district sections in which production and/or processing is allowed lists what type of permit is needed (Permitted or Administrative Use Approval) and in some instances setbacks and parcel size restrictions. The industrial zones have additional odor standards for indoor production, which are also repeated in the supplemental requirements.

§20.80.690 *et seq.* contains the supplemental requirements that such uses must meet. These include standards for odor (indoor production only), lighting, traffic, parking, character, and maximum number of employees (for processing).

As for our definitions, we took them straight from the state's definitions. But those were set up primarily for security and taxing purposes, not necessarily for land use regulations. We point this out since these definitions consider rigid-walled greenhouses to be indoor operations, even though the roofs and windows are opened at certain times of the year allowing odor to escape untreated.

Policy Questions

As there is no uniform "right way" to regulate marijuana, it's difficult for staff to just develop draft code for the Commission to review. Thus, we've developed a set of policy questions to review with the Commission. Based on this discussion and answers provided, staff will then draft new regulations for further review and a public hearing by the Commission.

Please note that answers to the policy questions below affect the outcomes or need for some of the other policy questions (some of them even becoming moot). Thus, staff is pointing out all policy alternatives but cannot produce a draft code until policy choices are made.

1) Should we prohibit or limit outdoor production?

The most common complaint we've heard about marijuana production facilities is regarding the odor from outdoor operations. When such operations first started, producers generally were tied to the growing season, which only allowed for one grow per year, limiting the odor to just 1 – 2 months. However, producers have found that through the use of lighting, shading, and heating (in hoop-houses or greenhouses) they can now achieve up to three "outdoor" grows per year, which extends the odiferous periods nearly year round. This could be solved or ameliorated in several ways:

a) Alternative A: Prohibit outdoor production in all zones.

Indoor production facilities (at least, completely indoor facilities [see question 2]) can better manage odor through the use of ventilation systems, air filters, and other technology. Prohibiting outdoor production provides the greatest level of protection from potential adverse odor impacts and is a straightforward regulatory approach that provides very clear direction and expectations to staff, applicants, and potential neighbors. Both our neighboring counties (Skagit and San Juan) have taken this

¹ Though they also have some "good neighbor" rules, LCB agents have told us they are difficult to enforce.

² As of 4/27/21 there are 1,311 producer, 1,432 processor, and 566 retailer licenses issued in the state.

³ Though they may be exchanged between parties with LCB approval, and the LCB has held a few in reserve.

approach and only allow indoor grows. Island County, on the other hand, allows outdoor grows in the rural and agricultural zones subject to a conditional use permit (CUP). The downsides to this tactic are that (1) indoor production uses much more energy (lighting, ventilation, etc.) and water than outdoor production, adding to our carbon footprint; and (2) require more costly and significant infrastructure, increasing final product prices.

b) *Alternative B: Prohibit outdoor production in certain districts.*

The odor complaints we've received are primarily in the Rural district where residential uses and smaller lot sizes are more common, so if the Commission/Council doesn't want to prohibit outdoor production throughout the County we could prohibit it in this district. Staff would also suggest that it be prohibited in the industrial districts (LII, HII, & RIM), as these areas tend to be developed as industrial or business parks. In fact, even if we weren't to prohibit outdoor grows in the Rural district, it still may be a good idea to prohibit it in the industrial districts so that we're not using up our industrial/commercial land base with an outdoor use.

If this alternative is chosen, staff would recommend that outdoor production continue to be allowed in the Agriculture district, and perhaps the Rural Forestry district, as they're intended for resource production and anyone living there is already subject to and used to dealing with agricultural externalities. Another alternative would be to allow outdoor production in the Agriculture district but prohibit it in the Rural Forestry (RF) district because of a potential conflict with forest management practices.

c) *Alternative C: Limit outdoor production facilities by Liquor and Cannabis Board (LCB) tiers*

A third alternative would be to limit outdoor production in certain zones to certain LCB tiers. These tiers limit production to a maximum plant canopy, as follows:

- Tier 1—maximum canopy of 10,000 sq. ft.
- Tier 2—maximum canopy of 20,000 sq. ft.
- Tier 3—maximum canopy of 30,000 sq. ft.

Currently only the LCB regulates canopy sizes, but according to the LCB officers staff has worked with, there is ambiguity in the state standard for measuring canopy, and the LCB has generally not enforced on this aspect. Some producers grow their plants tightly, but others more spread out and claim that the space between the plants doesn't count toward canopy area (and given a lack of standards is hard to counter). Based on staff observations and permitting experience it appears that on average 10,000 sq. ft. of canopy generally occupies an acre: Thus, Tier 1 would need an acre; Tier 2, 2 acres; and Tier 3, 3 acres.

So we could, for example, allow only Tier 1 (or 1 & 2) outdoor production in the Rural (and/or other) district(s) while allowing all tiers in other districts; or only allow the larger, more intensive Tier 3s as an indoor use perhaps only in the industrial zones. We could even say that all Tier 3's *must* be indoor wherever they are. This would limit the size and intensity of facilities in the most residential district(s).

2) *Should we better define "outdoor" vs. "indoor" production facilities?*

If the Commission/Council decides to prohibit outdoor production in all or certain zones (as discussed in 1), above) we should amend our definitions of "indoor" and "outdoor" production (currently embedded in the definition of "marijuana production facility," §20.97.227). The reason is that greenhouses, just like hoop-houses, are often opened (windows & roofs) during favorable weather and thus odor becomes harder to contain or mitigate. Though the state and County codes consider rigid-wall greenhouses as "indoor" we may want to either (1) define them as being outdoors or (2) define "indoor" as being in a structure that doesn't open so that all air *must* go through a ventilation/filtration system (this would allow the use of greenhouses, but who's odor can be mitigated. (If the Commission/Council ends up not prohibiting or limiting outdoor production then this may be a moot point.)

3) What type of uses/permits should production and processing facilities be classified as, Permitted, Administrative Use, or Conditional Uses?

Because Council chose to treat production similar to an agricultural use when our marijuana regulations were first adopted, in general, production and processing facilities are currently Permitted (P) uses. This means they only require a Building Permit and/or Land Disturbance Permit, except in the Rural district where an Administrative Approval Use (ADM) permit is required.

Staff has come to think that such facilities ought to require a land use permit, either an Administrative Approval Use (ADM) or Conditional Use (CUP), as both of these permit types (1) require that a site plan be reviewed and approved prior to a building permit being applied for, (2) require public noticing and comment, (3) provide more latitude for attaching site specific conditions, (4) often require SEPA review (if over a certain size), (5) can more readily be revoked, and (6) in the case of a CUP, require a public hearing.

Staff would suggest the permit scheme shown in Table 1. We’re not as concerned about production in the industrial districts (RIM, LII, or HII) as generally these are indoor operations in fully enclosed buildings, so believe that an ADM would suffice. Similarly, if outdoor production is prohibited (in all or some districts), then an ADM should suffice for indoor production in all/those districts as well, since notification and public comments are still required and considered.

Table 1. Staff suggested permit scheme

Zone	Production		Processing	Retail
	Outdoor*	Indoor		
R	CUP	ADM	ADM	N/A
RF	CUP	ADM	ADM	N/A
A	CUP	ADM	ADM	N/A
RIM	ADM	P	ADM	N/A
LII	ADM	P	ADM	N/A
HII	ADM	P	ADM	N/A
STC	N/A	N/A	N/A	P
NC	N/A	N/A	N/A	P
RGC	N/A	N/A	N/A	P
GC	N/A	N/A	N/A	P

* If outdoor production is prohibited this column is moot.

4) Should we limit the number of LCB licenses per lot in the R, RF, and A Districts and/or require a separation between producers?

Other jurisdictions have limited the number of LCB licenses to one per legal lot, though this may include a combination of one production and one processing license. Such a rule prevents multiple businesses from operating on the same lot or from one business buying additional licenses, the thought being that we might not want licenses being “stacked” so that the operation becomes huge. Staff suggests this could be an option for the Rural, Rural Forestry, and Agriculture districts. The County receives notification of issued LCB licenses annually.

Similarly, we could require a separation between production licenses so as to prevent multiple operations from agglomerating in a particular neighborhood. If this option is taken, how large should this separation be?

5) How should we address lighting?

Regarding outdoor lighting fixtures used for security or visibility we haven’t had complaints. Nonetheless, staff thinks we ought to have a standard that requires them to be designed and down-shielded to direct light away from adjoining properties, critical areas, shorelines, and public roads. Such lights can easily be designed to meet these rules.

The lighting complaints we have received are usually about bright greenhouse lights, which give the property a general bright glow and disturbs the night sky. If the Commission/Council decides to prohibit outdoor production [question 1(a)] and define growing in greenhouses as outdoor [question 2]), then this is a moot question. However, if you choose to continue to allow outdoor production then staff would recommend that we require blackout shades be installed and used in such structures.

6) How should we address odor?

Controlling odor from indoor production is relatively straightforward, and we have draft language for that (requiring engineer designed ventilation and odor control systems). However, if the Commission/Council choose not to prohibit outdoor production, controlling odor from that is not really feasible. Though there's not a policy choice about odor here, we raise it only to inform your discussion on whether outdoor production should be prohibited.

7) Should we change the setbacks/separation requirements?

Currently production in the Rural, Rural Forestry, and Agriculture districts requires a 1,000' separation (measured from property lines) from community centers⁴ and a 300' setback (measured from structures) from existing off-site residences⁵. For processing we have the same rule in the Rural district, but only the 300' setback from residences in the Rural Forestry district, and only the 1,000' setback from community centers in the Agricultural district.

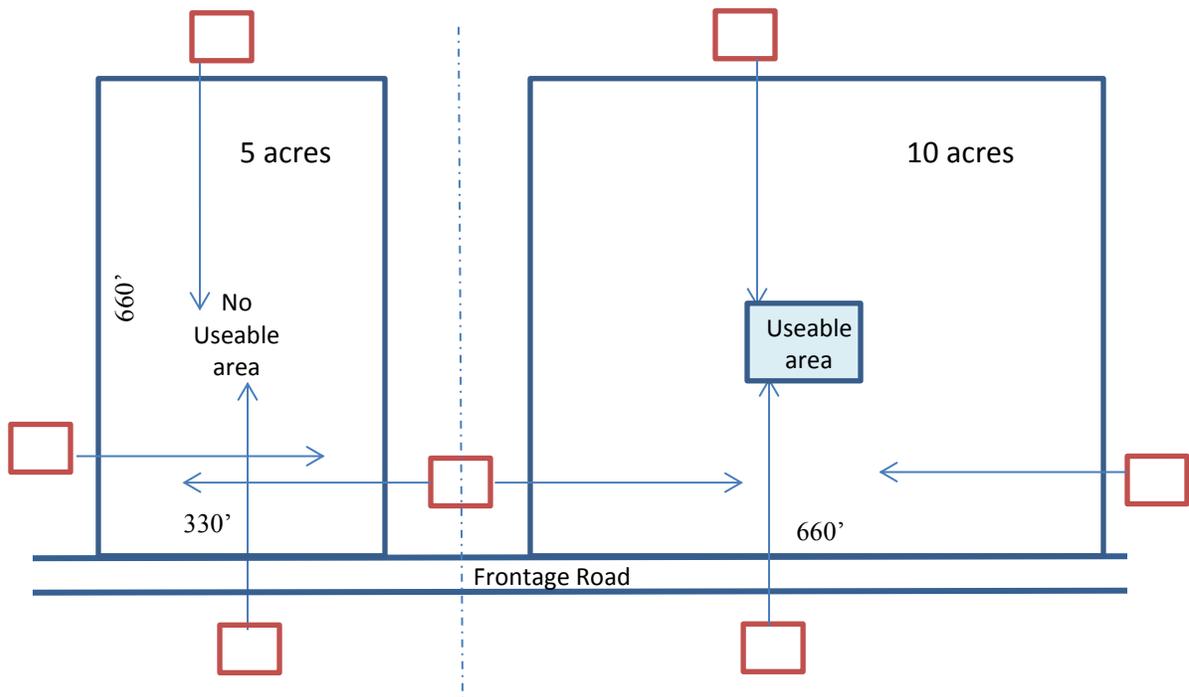
Regarding the 1,000' setback from community centers, staff thinks we ought to maintain that as it's a state requirement (though theirs is only from schools; Whatcom County expanded it to include all community centers. However, some citizens have suggested increasing this setback especially if outdoor production in the Rural zone is retained.

Regarding the 300' setback from existing off-site residences, some have questioned whether this should be larger, the argument being that impacts may be lessened by distance. However, this setback can greatly encumber a property if it's closely surrounded by houses, as it forces facilities to the center of the lot. For instance, (see diagram below) a typical 5-acre lot is 660' deep by 330' wide, and a typical 10-acre lot is 660' deep by 660' wide. If houses closely surround the subject property, a facility can't fit on a 5-acre lot as the lot isn't wide enough to attain the setback, and on a 10-acre lot the facility can only be about 60' wide unless it's pushed back quite a ways, forcing facilities to be in the center of the lot. This might not be a problem in the Rural and Rural Forestry districts, but can cause such uses in the Agriculture district to be sited in the middle of agriculture land, using up that valuable resource by hindering agriculture on the rest of the lot.

Nonetheless, this rule hasn't prohibited marijuana facilities from locating in Whatcom County; it's only made applicants choose their property carefully so as to be able to obtain these setbacks. We only raise this issue so as to inform the Commission/Council that were you to increase this setback it could limit the land base on which such facilities can be located even more so.

⁴ 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."

⁵ This 300' setback was taken from our manure lagoon regulations, WCC 20.80.225(2).



Note: Lines and distances are drawn to scale. The blue arrows represent a 300' setback.

8) Should we limit processing facilities that use hazardous materials to the industrial districts?

Staff’s understanding is that such materials are not used in all processing facilities, only those extracting cannabinoids for use in edibles. Staff suggests that these types of facilities ought to be allowed only in the industrial districts. In general these types of buildings need to be sprinkled anyway, and fireflow for such systems usually can’t be met in the rural areas. Thus doing so wouldn’t have much of an impact on processors using such materials.

9) How should we handle any facilities that become nonconforming due to the changes to these regulations?

Whatcom County’s nonconforming regulations are quite liberal, basically allowing nonconforming uses to remain (which is common), to expand (which is somewhat common), or even to change to another nonconforming use (which is uncommon) through a CUP.

Staff recommends that a legally existing marijuana production or processing facility that is made nonconforming by any revision to the marijuana regulations should not be able to change to another nonconforming use. As an example, consider a legally existing outdoor production facility: It should be able to continue operations (even if new outdoor production is prohibited) but it should not be able to change to, say, an automobile wrecking yard if such a use isn’t allowed in the zone in which it’s located.

And though our nonconforming regulations allow the expansion of a nonconforming use, the Commission should also consider whether that rule should apply to marijuana facilities. For instance, if outdoor operations become prohibited, would we want a Tier 1 outdoor operation made nonconforming to be able to expand to a Tier 2 or 3 outdoor operation?

10) How do you determine if off-site odor impacts rise to the level of a “public nuisance”?

Throughout Title 20, and in fact the entire Whatcom County Code, certain acts or omissions are declared to be public nuisances and this is the case with our marijuana regulations, which state that odors can’t be emitted (beyond the parcel boundaries) to a level that causes a public nuisance. However, there is no definitive regulatory threshold for determination of a public nuisance regarding off-site odors. As such, when such claims of a public nuisance are made, they are more typically determined through judicial proceedings. Staff would recommend that a definition of nuisance be adopted in Title 20 to remedy this.

Existing Whatcom County Marijuana Regulations in Title 20 (Zoning)

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.

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

- (1) The facility shall not be located within 1,000 feet of a community center. The distance shall be measured as the shortest straight line distance from the property line of the proposed building/business location to the property line of the community center. The zoning administrator may waive this spacing requirement from community centers if the authorized representatives of all existing community centers within 1,000 feet provide a notarized written agreement as provided by the department consenting to the facility.
- (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 facility; provided, that in addition to the criteria found in WCC 20.80.690 through 20.80.694 and WCC 22.05.028:

- (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.
- (3) 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.

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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 Chapter 20.80 WCC (Supplementary Requirements) and Chapter

22.05 WCC (Project Permit Procedures), the Whatcom County SEPA Ordinance, the Whatcom County Subdivision Ordinance and 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:

- (1) The facility shall not be located within 1,000 feet of a community center. The distance shall be measured as the shortest straight line distance from the property line of the proposed building/business location to the property line of the community center. The zoning administrator may waive this spacing requirement from community centers if the authorized representatives of all existing community centers within 1,000 feet provide a notarized written agreement as provided by the department consenting to the facility and the waiver is approved through an administrative approval process per WCC 22.05.028.
- (2) The facility shall not be located within 300 feet of any existing residential unit not located on the same parcel as the facility. The distance shall be measured as the shortest straight line distance from the closest point of a single-family dwelling (structure) to any structure or fence used for the production of marijuana. The zoning administrator may waive this spacing requirement from residential units if the owners of all existing residential units within 300 feet provide a notarized written agreement as provided by the department consenting to the facility, and the waiver is approved through an administrative approval process per WCC 22.05.028.

...20.40.100 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.

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 Chapter 20.80 WCC (Supplementary Requirements) and Chapter 22.05 WCC (Project Permit Procedures), the Whatcom County SEPA Ordinance, the Whatcom County Subdivision Ordinance and the Whatcom County Shoreline Management Program.

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

- (1) The facility shall not be located within 1,000 feet of a community center. The distance shall be measured as the shortest straight line distance from the property line of the proposed building/business location to the property line of the community center. The zoning administrator may waive this spacing requirement from community centers if the authorized representatives of all existing community centers within 1,000 feet provide a notarized written agreement as provided by the department consenting to the facility and the waiver is approved through an administrative approval process per WCC 22.05.028.
- (2) The facility shall not be located within 300 feet of any existing residential unit not located on the same parcel as the facility. The distance shall be measured as the shortest straight line distance from the closest point of a single-family dwelling (structure) to any structure or fence used for the production of marijuana. The zoning administrator may waive this spacing requirement from residential units if the owners of all existing residential units within 300 feet provide a notarized written agreement as provided by the department consenting to the facility, and the waiver is approved through an administrative approval process per WCC 22.05.028.

...

20.42.100 Accessory uses.

...

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

- (1) The facility is accessory to the on-site production of marijuana.
- (2) The facility shall not be located within 300 feet of any existing residential unit not located on the same parcel as the facility. The distance shall be measured as the shortest straight line distance from the closest point of a single-family dwelling (structure) to any structure or fence used for the processing of marijuana. The zoning administrator may waive this spacing requirement if the owners of all existing residential units within 300 feet provide a notarized written agreement as provided by the department consenting to the facility, and the waiver is approved through an administrative approval process per WCC 22.05.028.

Chapter 20.69 RURAL INDUSTRIAL AND MANUFACTURING (RIM) DISTRICT

20.69.050 Permitted uses.

The following permitted uses shall be allowed subject to an evaluation by the zoning administrator pursuant to the provisions of this chapter and Chapter 20.80 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 are permitted.

.051 Manufacturing/fabrication type uses.

...

- (17) Marijuana production facility.
- (18) Marijuana processing facility.

...

20.69.700 Performance standards.**20.69.704 Odor, dust, dirt, and smoke.**

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.

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.

Chapter 20.66 LIGHT IMPACT INDUSTRIAL (LII) DISTRICT

20.66.050 Permitted uses.

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

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.087 Marijuana production or processing facility.

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20.66.700 Performance standards.

...

20.66.704 Odors.

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.

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.

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 Chapter 20.80 WCC, Supplementary Requirements, and Chapter 22.05 WCC, Project Permit Procedures, the Whatcom County SEPA Ordinance, the Whatcom County Subdivision Ordinance and 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.)

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.066 Marijuana production or processing facility.

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20.68.700 Performance standards.

...

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.

...

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.

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.

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.

Chapter 20.97 DEFINITIONS

20.97.225 Marijuana, marihuana or cannabis.

“Marijuana,” “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” 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” 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. Indoor production shall be within a fully enclosed secure indoor facility or greenhouse with rigid walls, a roof, and doors. Outdoor production may take place in non-rigid greenhouses, other structures, or an expanse of open or cleared ground fully enclosed by a physical barrier.

20.97.228 Marijuana retail facility.

“Marijuana retail” 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 that is associated with the sale of marijuana.

Summary of Existing Marijuana Rules

Type	Zone Requirements						Supplemental Requirements (Applies in all zones)					
	Zone	Permit Type	Distance req't	Lot Size	Accessory Use	Odor	Odor	Lighting	Traffic	Parking	Character	Max. Employees
Production	R	ADM	Not w/in 1,000' of a community center or 300' of an offsite residence ⁶	If land is < 4.5 ac then facility limited to 2,000 sf ⁷			For indoor production only, must install ventilation, can't emit odors beyond walls, or bother neighbors	Must be controlled away from adjoining properties and roads	Can't be more than what's expected in the zone	Must provide off-street parking	Must be compatible with area's character	N/A
	RF	P										
	A	P										
	RIM	P			For indoor production only, must install ventilation, can't emit odors beyond walls, or bother neighbors							
	LII	P										
	HII	P										
Processing	R	ADM	Not w/in 1,000' of a community center or 300' of an offsite residence ¹	If land is < 4.5 ac then facility limited to 2,000 sf ²	Must be accessory to production	For indoor processing only, must install ventilation, can't emit odors beyond walls, or bother neighbors	For indoor processing only, must install ventilation, can't emit odors beyond walls, or bother neighbors	Must be controlled away from adjoining properties and roads	Can't be more than what's expected in the zone	Must provide off-street parking		10
	RF	P	Not w/in 300' of an offsite residence ¹									10
	A	P	Not w/in 1,000' of a community center ¹									20
	RIM	P										10
	LII	P										10
	HII	P										10
Retail	STC	P		Limited to 2,500 sf								
	NC	P										
	RGC	P										
	GC	P										

⁶ May be waived when all adjacent property owners agree.

⁷ Note that a Tier 1 production license allows up to 10,000 sf of grow area, so this rule essentially prohibits production on smaller lots.