



## Memorandum

DATE: September 15, 2021  
TO: Planning Commission  
FROM: Cliff Strong, Senior Planner  
THROUGH: Mark Personius, Director  
RE: Draft Marijuana Regulations Amendments

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### Purpose

On September 9<sup>th</sup> the Commission held 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 was to discuss with the Commission some policy questions so as to provide guidance in developing the amendments.

Based on that discussion staff has developed some draft amendments that the Commission will review in workshop on September 23<sup>rd</sup>. Staff anticipates that the Commission will hold a public hearing on the final draft on October 14<sup>th</sup>.

### Draft Amendments

The following is a discussion of what staff heard from the Commission and how we addressed their comments on the policy questions discussed. Staff’s first cut at the draft amendments are shown in Exhibit A (attached) and summarized in Table 2, below (the easiest way to compare the proposed rules to the existing ones (Table 1).

### Definitions of “Indoor” vs. “Outdoor” Production Facilities

In discussing this issue further, staff recommends that we relabel “outdoor” and “indoor” as Type 1 and Type 2 Marijuana Production Facilities. The reason is that the more we delved into the differences between outdoor and indoor in terms of structure type, the more confusing it got, 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 growing cycle. Testimony from producers indicated that without artificial lighting a producer can only obtain one grow cycle here in Whatcom County. Thus, limiting facilities to those that don’t use artificial lighting (Type 1) and the size of Type 2’s to LCB Tier 1’s and 2’s in the Rural and Agricultural districts would limit the size and odor.

One caveat is that we have also heard from producers that even if they are small scale and don’t use artificial lighting they still need at least one small structure in which they can overwinter the plants, so the proposed definition of a Type 1 facility would allow one small<sup>1</sup> structure with artificial lighting for overwintering plants. (§20.97.227)

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<sup>1</sup> We don’t yet know the size needed for overwintering plants, though have calls out to determine and should have by the P/C’s meeting.

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

The Planning Commission seemed averse to prohibiting outdoor production entirely, in particular because it uses less energy and is less costly for small start-ups. But they did seem to 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 facilities in the Rural district).

Thus, in the Rural and Agricultural districts the draft regulations propose to limit the production area of Type 1 facilities to a maximum of 1 and 2 acres, respectively, (§20.80.690(2)(a)) and limit Type 2 facilities to Tier 1 & 2 LCB licenses only (§20.80.690(2)(b)); and prohibit Type 1 facilities in the Rural Industrial and Manufacturing, Light Impact Industrial, and Heavy Impact Industrial districts, as these zones are intended for industrial type development and higher wage job creation. (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 leaned toward requiring permits that require more public process. Thus, rather than being a Permitted use in most zones as they are currently, staff is proposing that:

- In the Rural and Agriculture districts Type 1 production and processing be an Administrative Approval Use (requiring public notice, written comments, and decision by staff) and Type 2 production 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 be prohibited and Type 2 production and processing be allowed as a Permitted Use.
- Additionally, staff now recommends that neither marijuana production nor processing 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 easily mitigated by requiring the installation and use of down-shielding. For transparent and semi-transparent structures, 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)).

It’s also been suggested by public comment that we limit or prohibit the use of artificial lighting in transparent and semi-transparent structures, which would not only reduce lighting impacts, but also limit outdoor production to 1 growing cycle, further reducing odor impacts. This notion has been built into the proposed definitions of Type 1 and Type 2 production facilities (see above).

## 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. Nonetheless, it can be significantly reduced in time and duration through the other regulations the Commission is considering (i.e., limiting or prohibiting outdoor production, redefining indoor vs. outdoor production, and limiting or prohibiting the use of artificial lighting in certain zones).

## 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 seemed to agree to limiting 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 centers<sup>2</sup> and a 300’ setback (measured from structures) from existing off-site residences<sup>3</sup>. 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)(c)).

## Processing Facilities that Use Hazardous Materials

The Commission seemed to agree 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)).

## Nonconforming Rules

The Commission seemed to agree 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)).

## Public Nuisances

Upon further consideration, staff has withdrawn its proposal to develop a definition of “nuisance.”

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<sup>2</sup> 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.”

<sup>3</sup> This 300’ setback was taken from our manure lagoon regulations, WCC 20.80.225(2).

## Other Issues

Please be aware that there are other regulations proposed, most of which have been carried over from our existing regulations. However, none of these are policy changes so we have not raised them to a policy discussion. Nonetheless we encourage the Commission and public to read the draft regulations thoroughly.

**Table 1. 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 <sup>4</sup>	If land is < 4.5 ac then facility limited to 2,000 sf <sup>5</sup>			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 <sup>1</sup>	If land is < 4.5 ac then facility limited to 2,000 sf <sup>2</sup>	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 <sup>1</sup>									10
	A	P	Not w/in 1,000' of a community center <sup>1</sup>									20
	RIM	P										10
	LII	P										10
	HII	P										10
Retail	STC	P		Limited to 2,500 sf								
	NC	P										
	RGC	P										
	GC	P										

<sup>4</sup> May be waived when all adjacent property owners agree.

<sup>5</sup> 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.

Table 2. Summary of Proposed Marijuana Rules

Type	Zone Requirements			Supplemental Requirements									
	Zone	Facility/Permit Type	Lot Coverage <sup>1</sup>	Facility Size Restrictions	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 facility limited to 2,000 sf		Not w/in 1,000' of a community center or 300' of an offsite residence <sup>2</sup>	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	Artificial lighting prohibited in greenhouses and hoop houses Light fixtures shall be designed and down-shielded away from adjoining properties, critical areas, shorelines, and public roads. Indoor lights must use blackout shades.	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		For parcels ≥ 4.5 ac production facility limited to 1 ac									
	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)	Production facility limited to 2 ac									
		Type 2 – CUP		Limited to Tiers 1 & 2 licenses; also 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 <sup>2</sup>	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											

<sup>1</sup> 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.

<sup>2</sup> May be waived when all adjacent property owners agree.