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Ordinance 904

An ordinance creating a chapter in the Clallam County Code titled "Recreational Marijuana" establishing the placement of and development standards for recreational marijuana producers, processors, and retailers licensed by the Washington State Liquor and Cannabis Board

The Board of Clallam County Commissioners makes the following findings:

- A. Initiative 502 was passed by the voters of the State of Washington in November 2012, providing a framework under which marijuana producers, processors, and retailers can become licensed by the State of Washington. While marijuana is still classified as a controlled substance under state law in RCW 69.50.204(c)(22), the adoption of Initiative 502 allows it to be produced, processed and sold under the licensing program established by the Washington State Liquor and Cannabis Board.
- B. RCW 69.51A.140 allows local jurisdictions to adopt zoning requirements for the production, processing, or retail facilities of cannabis or cannabis products within their jurisdiction.
- C. The Washington State Liquor and Cannabis Board (LCB) has put forth under Chapter 314-55 WAC basic regulations for the licensing of marijuana producers, processors, and retailers.
- D. Marijuana is illegal under the federal Controlled Substances Act, 21 U.S.C. §§801 et seq. State and local regulations do not preempt federal law. People and businesses involved in the production, processing, sales, and possession of marijuana could still be subject to prosecution under federal law. Local zoning and other regulations are not a defense against a violation of federal law.
- E. These regulations incorporate and reference the United States Department of Justice requests for restrictions and assurances on Washington marijuana regulation to protect public health and safety, memorialized in a joint statement by Washington State Governor Jay Inslee and Attorney General Bob Ferguson dated August 29, 2013. This statement was incorporated into the Washington State Liquor Control Board regulations, which includes but is not limited to: prohibition on locations with 1,000 feet of an elementary or secondary school, playground, recreation center or facility, child care center, public park, public transit center, library or arcade where admission is not restricted to those age 21 or older; requirements for alarm systems and security cameras at licensed facilities; requirements for signage prohibiting consumption of marijuana on the premises and prohibiting access by persons under age 21; and limited hours of operation.
- F. Clallam County makes no representations or commitments about the lawfulness of the facilities and leaves all issues relating to the legality and licensing of such facilities to be determined by the federal and state governments in the exercise of their lawful authority, as finally determined by a court of appropriate jurisdiction.
- G. Nothing in this ordinance is intended nor shall be construed to authorize or approve of any violation of federal or state law.

- H. While the LCB adopted one report on the environmental impacts associated with the cultivation of marijuana, the County is not aware of any other analyses performed by the State of Washington to determine the environmental or secondary land use impacts that a proliferation of recreational marijuana uses would have on towns, cities, and counties in Washington.
- I. Nothing indicates that the LCB will perform any analyses under the State Environmental Policy Act (SEPA) to determine the significant adverse environmental impacts associated with any individual licensee's operation of a marijuana business.
- J. The County plans under the Growth Management Act ("GMA," RCW 36.70A), and is required to perform SEPA prior to adopting any comprehensive plan or development regulations. The Department of Community Development prepared and issued a Determination of Non-Significance (DNS) on April 20, 2015 for this non-project proposal.
- K. The County has no environmental information upon which to make any determinations relating to marijuana uses. The County must collect the same from either the experiences of other areas or by empirical knowledge (after the use has located in the County and the impacts are known).
- L. Marijuana uses are new uses that were not contemplated during the development of Clallam County's zoning districts and development regulations. On April 2, 2014, the Department of Community Development issued a policy interpretation in which marijuana producing and processing were presumptively allowed in certain zones.
- M. In 2014, the Board of County Commissioners adopted interim controls to 1) allow for local regulatory oversight and 2) monitor public input and the amount of LCB regulatory oversight while a permanent ordinance was crafted. The interim controls were extended on March 17, 2015 with an effective date of March 27, 2015.
- N. SB 5052 passed by the legislature in April 2015, partially vetoed and signed into law in the Regular Session of the 2015 Legislature, provided for merging recreational marijuana regulation with medical marijuana regulation. This merge became effective July 24, 2015.
- O. Prior to passing SB 5052, medical marijuana was not regulated because it was an affirmative defense. This position was made clear by the courts in the *Cannabis Coalition v. City of Kent* cases; therefore the Planning Commission had not considered regulation of medical marijuana.
- P. The Director of Community Development determined that the Planning Commission was too far into the process of reviewing an ordinance that addressed only recreational marijuana. Medical marijuana regulations, if any, will be addressed in the future.
- Q. The Board of Clallam County Commissioners' objective in creating these regulations is to tightly manage and regulate the marijuana market with strict controls that prevent diversion, illegal sales, and sales to minors while providing reasonable access to products that mitigate the illicit market.

- R. The Board of Clallam County Commissioners has considered land uses associated with the production, processing, and retail sales of marijuana in light of the State's regulations and enforcement, and has prepared a zoning ordinance to address these impacts.
- S. The Board of Clallam County Commissioners has considered amendments to Clallam County Code including regulations with respect to the allowance of licensed producers, processors, and retailers as allowed uses in applicable zones.
- T. The Clallam County Planning Commission conducted a public hearing on August 5, 2015 and recommends adoption of this ordinance by the Board of Clallam County Commissioners.
- U. The Board of Clallam County Commissioners held a work session on August 17, 2015 and directed the Department of Community Development to prepare a call for hearing to be considered August 18, 2015 scheduling a public hearing for September 8, 2015.

BE IT ORDAINED BY THE BOARD OF CLALLAM COUNTY COMMISSIONERS:

**Section 1. Section .010, Purpose, is created to read as follows:**

The purpose of this chapter is:

- (1) To acknowledge the passage and enactment of Initiative 502 and associated licensing procedures for recreational marijuana by the state of Washington by developing local review standards for the placement and development of recreational marijuana uses.
- (2) Minimize potential adverse impacts to the citizens of Clallam County by developing land use regulations regarding the location and development standards for marijuana land uses.
- (3) Provide a consistent and predictable path for the development of recreational marijuana land uses and encourage their placement in areas where adverse impacts of odors, noise, lighting and/or other nuisances can be minimized with surrounding properties.
- (4) Retain forest lands by limiting the footprint of buildings, impervious surfaces, and infrastructure associated with marijuana production and processing business siting within forest resource lands.
- (5) This chapter is necessary to protect the public health, safety and welfare of Clallam County citizens.
- (6) This chapter shall apply to those marijuana producers, processors and retailers that are licensed by the Washington State Liquor and Cannabis Board under Chapter 314-55 WAC.
- (7) Nothing in this chapter shall be construed to supersede Washington state law prohibiting the acquisition, possession, manufacture, sale, or use of marijuana in any manner not authorized by Chapter 69.50 or 69.51A RCW.

**Section 2. Section .020, Definitions, is created to read as follows:**

The terms used in this chapter shall have the following meanings. Where these definitions conflict with RCW 69.50.101, as now or hereafter amended, those in state law shall govern.

- (1) "Marijuana" 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.

(2) "Marijuana concentrates" means products consisting wholly or in part of the resin extracted from any part of the plant Cannabis and having a THC concentration greater than sixty percent.

(3) "Marijuana-infused products" means products that contain marijuana or marijuana extracts, are intended for human use, and have a THC concentration greater than 0.3 percent and no greater than sixty percent. The term "marijuana-infused products" does not include either useable marijuana or marijuana concentrates.

(4) "Marijuana processor" means a person licensed by the state liquor and cannabis board to process marijuana into marijuana concentrates, useable marijuana and marijuana-infused products, package and label marijuana concentrates, useable marijuana, and marijuana-infused products for sale in retail outlets, and sell marijuana concentrates, useable marijuana, and marijuana infused products at wholesale to marijuana retailers. All marijuana processors are classified as either a type 1 or a type 2 processor:

(a) Type 1 processor is limited to drying, curing, trimming and packaging.

(b) Type 2 processor is limited to all marijuana processor 1 activities, extracting concentrates and infusing products, mechanical and chemical processing and packaging.

(5) "Marijuana producer" means a person licensed by the state liquor and cannabis board to produce and sell marijuana at wholesale to marijuana processors and other marijuana producers.

(6) "Marijuana retailer" means a person licensed by the state liquor and cannabis board to sell marijuana concentrates, useable marijuana, and marijuana-infused products in a retail outlet.

(7) "Production tiers" are categorized by the State in the amount of actual square footage in their premises that will be designated as plant canopy. There are three categories as follows:

(a) Tier 1 – less than 2,000 square feet

(b) Tier 2 – 2,000 to 10,000 square feet

(c) Tier 3 – 10,000 to 30,000 square feet

(8) "Retail outlet" means a location licensed by the state liquor and cannabis board for the retail sale of marijuana concentrates, useable marijuana, and marijuana-infused products.

(9) "Useable marijuana" means dried marijuana flowers. The term "useable marijuana" does not include either marijuana-infused products or marijuana concentrates.

**Section 3. Section .030, Location of Recreational Marijuana Facilities, is created to read as follows:**

This section identifies the location requirements for marijuana land uses and required review process.

(1) Application for land use approval for recreational marijuana production, processors, and retailers are allowed only in those zones as set forth in this section. Zones that have not been listed are prohibited.

Table

ZONE	PRODUCER	PROCESSOR	RETAIL
Commercial Forest (CF)	A <sup>1</sup>	A <sup>1</sup>	X
Commercial Forest/Mixed Use 20 CFM 20)	A <sup>2</sup>	A <sup>2</sup>	X
Rural Commercial (RC)	A <sup>3</sup>	A <sup>3</sup>	A
Rural Neighborhood Commercial (RNC)	A <sup>3</sup>	A <sup>3</sup>	A

ZONE	PRODUCER	PROCESSOR	RETAIL
Agricultural Retention (AR)	C	C	X
Rural Limited Commercial (RLC)	A	A	A
Western Region Rural Center (WRC)	A	A	A
Urban Neighborhood Commercial (UNC)	A	A	A
Urban Regional Commercial (URC)	A	A	A
Industrial (M)	A	A	X
Urban Reserve Industrial (URI)	A	A	X
Carlsborg Industrial (CI)	A	A	X
Rural Village (RV)	X	X	A
Rural Village Low (RV2)	X	X	A
Rural Center (CEN)	X	X	A
Tourist Commercial (TC)	X	X	A
Tourist Rural (TR)	X	X	A
Urban Center (UC)	X	X	A
Carlsborg Village Commercial (CV)	X	X	A
Carlsborg Village Center (CN)	X	X	A
Carlsborg General Commercial (CGC)	X	X	A

A<sup>1</sup> = Allowed – Type 1 processor only; Tier 1 or 2 production only; minimum parcel size of 80 acres (no more than 5 acres devoted to marijuana operations); and a 200 foot minimum property line setback.

A<sup>2</sup> = Allowed – Type 1 processor only; Tier 1 or 2 production only; minimum parcel size of 20 acres; and a 200 foot minimum property line setback.

A<sup>3</sup> = Allowed – Type 1 processor only; Tier 1 or 2 production only.

C = Conditional Use – Minimum 15 acres or more of contiguous land ownership; minimum 100 foot property line setback for all new construction (existing buildings are exempt from setback requirement); the development section is the location of the site production and processing of marijuana which may be established up to a maximum of 5 percent of the development parcel; total cumulative gross floor area of structure(s) not to exceed a maximum of 30,000 square feet; all structure(s) accommodating marijuana production or processing shall be within a rigid frame structure(s).

A = Allowed.

X = Prohibited.

**Section 4. Section .040, General Development Standards, is created to read as follows:**

The standards listed below shall apply to all recreational marijuana facilities in the unincorporated areas of Clallam County.

(1) All facilities shall meet the standards of the Clallam County zoning ordinance, critical areas ordinance, shorelines, building code, fire code, health code, and all other applicable state and local laws.

(2) Marijuana production and marijuana processing facilities shall be designed to include controls and features to minimize noise from mechanical equipment and odors from marijuana detectable outside the facility. This plan shall state how the proposal will be operated in a manner consistent with baseline controls for odors and dust supported by the Olympic Region Clean Air Agency (ORCAA).

(3) Site or building improvements is subject to Clallam County zoning ordinance, Chapter 33.53, Landscape Requirements.

(4) If required, a sanitation and potable water plan is submitted to Clallam County Environmental Health for review and approval.

(5) All recreational marijuana operations shall be conducted indoors only, in a fully enclosed building, structure, or greenhouse.

(6) Any lighting proposed with marijuana facilities shall be hooded and/or shielded to prevent light transmission to neighboring properties.

**Section 5. Section .050, Application Process and Administration, is created to read as follows:**

All recreational marijuana facilities shall be reviewed for consistency with this chapter. Applications shall, at a minimum, contain the application materials found in Clallam County Code, Section 26.10.310. In addition to the application requirements found in Section 26.10.310, all applications shall include the following information:

(1) Name of the operation the production tier marijuana license that has been applied for at the Washington State Liquor and Cannabis Board.

(2) Provide a copy of the operation plan submitted to the Washington State Liquor and Cannabis Board.

(3) Proposed square footage of marijuana to be grown within building.

(4) Provide documentation that the existing electrical distribution system is adequate for your proposal.

(5) Clarify the sources of water for the marijuana production and marijuana processing. If more than one source of water would be used (i.e. irrigation, well, and/or public) outline when and how much would be used.

**Section 6. Section .060, Severability, is created to read as follows:**

If any section, subsection, or other portion of this chapter is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such section, subsection, or portion thereof shall be deemed a separate provision of this chapter and such holding shall not affect the validity of the remaining portions of this chapter.

ADOPTED this fifteenth day of September 2015

BOARD OF CLALLAM COUNTY COMMISSIONERS

  
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Jim McEntire, Chair

*voted no*  
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Mike Chapman

ATTEST:

  
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Trish Holden, CMC, Clerk of the Board

  
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Bill Peach