

BOARD OF COUNTY COMMISSIONERS
CHELAN COUNTY, WASHINGTON

RESOLUTION NO. 2016- 14

A resolution amending the text of the Chelan County Zoning Resolution, including Subsection 11.04, District Use Chart, and Subsection 11.97, Nonconforming Uses, prohibiting marijuana or cannabis production and processing pursuant to Chapter 69.50 RCW, collective gardens and cooperatives pursuant to RCW 69.51A, declaring nuisances, nonconforming uses and structures, and mandating cessation within two years.

Whereas, on September 29, 2015, Chelan County adopted Resolution 2015-94 establishing findings of fact and enacting a moratorium on marijuana retail sales, production, and processing pursuant to Initiative 502, and on the implementation of 2015 legislation HB 2136 and SB 5052.

Whereas, Chelan County conducted a duly advertised public hearing on Tuesday, November 10, 2015, during a regularly scheduled commission session at which public testimony was presented.

Whereas, on November 16, 2015, Chelan County adopted Resolution 2015-102 continuing the moratorium until March 27, 2016.

Whereas, the community development department solicited and incorporated input from citizens and marijuana businesses, conducted research regarding balancing negative and positive impacts resulting from marijuana operations in the county, produced draft regulations, and scheduled, advertised, and assisted in the conduct of public hearings by the planning commission and board of commissioners.

Whereas, the planning commission conducted a duly advertised public hearing on January 27, and continued to February 1, 2016, and promulgated findings of fact and conclusions of law and transmitted its recommendation to the board of commissioners.

Whereas, public testimony before the planning commission notably expressed direct negative impacts incurred by individuals, families, businesses, and the local economy resulting from all forms of marijuana or cannabis production and processing.

Whereas, the board of commissioners conducted a duly advertised public hearing on February 9, 2016, at which public testimony was received and considered, and the planning commission record and recommendation was incorporated and considered.

Whereas, public testimony at the board of commissioners' hearing notably expressed direct negative impacts incurred by individuals, families, businesses, and the local economy resulting from all forms of marijuana or cannabis production and processing.

Whereas, the records from the planning commission and board of commissioner public hearings contain testimony describing negative impacts including, but not necessarily limited to:

a. offensive, penetrating, and unhealthy odor for sustained periods of time exceeding months in duration seeping into homes, clothing, and cars, etc., and inconsistent with preexisting conditions in various neighborhoods and zones,

b. extensive light pollution inconsistent with preexisting conditions in various neighborhoods and zones,

c. concerns for personal safety, especially in residential areas, based upon the increased likelihood of burglaries and other serious criminal offenses at marijuana production and processing sites which constitutes an increase of such risks in various neighborhoods and zones inconsistent with preexisting conditions,

d. concerns for personal safety based upon the lack of license compliance resources possessed by the Washington State Liquor and Cannabis Board, (LCB), the limitations of county law enforcement resources to address the increased likelihood of crimes at marijuana production and processing sites, the distance to medical facilities from some areas, and the time for emergency response from other areas,

e. concerns for behavior exhibited by marijuana workers such as littering, trespassing, vandalism, unsafe driving, etc., which cause harm to neighboring properties and create personal safety risks,

f. concerns for esthetics of neighborhoods due to the use of unappealing fencing materials inconsistent with preexisting conditions in various neighborhoods and zones,

g. concerns for the influx of curious on-lookers to areas in which marijuana production and processing is conducted which increases traffic and causes safety concerns,

h. concerns for noise, traffic, light, etc., occurring at night which is disruptive and inconsistent with the preexisting peace and quiet of various neighborhoods and zones at night,

i. concerns for potential negative impacts on the supply of irrigation water and also drainage needs,

j. concerns for an observed lack of adequate sanitation facilities for marijuana workers,

k. concerns for lack of adequate physical buffers between residential and other zones from marijuana producers and processors,

l. concerns for observed lack of physical buffers between marijuana producers and processors and public bus stops where children are observed, and concerns for observed lack of physical buffers between marijuana producers and processors and parks, churches, campgrounds, and other public facilities where children are observed,

m. concerns for the potential for unlimited numbers of recreational marijuana businesses and collective gardens or cooperatives locating in Chelan County,

n. concerns for lack of notice to surrounding neighborhoods and communities regarding pending applications for state recreational marijuana business licenses,

o. concerns for potential negative impacts on real property values in the vicinity of marijuana producers and processors,

p. according to the Wenatchee World, on December 28, 2015, \$288,000 worth of processed marijuana was stolen from a licensed recreational marijuana facility in Omak, Washington, despite having required security measures in place.

q. Additionally, the LCB admits it is not focused on eradication of unlicensed, illegal marijuana growers or processors and recently informed Chelan County that it believes that the number of illegal grows has increased in this county since Initiative 502's effective date.

r. The LCB's June 3, 2013, SEPA environmental checklist stated at page 4, "[The] odor of growing or 'green' marijuana may alert malefactors to the location where marijuana is grown and creating [sic] the risk of burglary and robbery at that location."

s. The LCB's June 3, 2013, SEPA environmental checklist also stated at page 6, "Due to the high monetary value placed upon marijuana, areas can experienced [sic] a number of home invasion robberies, thefts, and murders related to marijuana cultivation, which impacts local law enforcement."

Whereas, because the impacts of marijuana land uses are notably negative, such uses should not be sited in any zone in Chelan County.

Whereas, never before has the county experienced a new use so inconsistent with existing uses to the extent that there is true concern for the ability of preexisting non-marijuana businesses and uses to co-exist and for the ability to maintain current quality of life standards in the county.

Whereas, halting the continued influx of marijuana production and processing is necessary to prevent further degradation of quality of life and the demise of other businesses and local economy in the county.

Whereas, there is no guaranty that new regulations which could solve incompatibility problems and mitigate negative impacts can ever be designed and implemented, thus permanent prohibitions are justified.

Whereas, the burden of determining which marijuana operations are illegal and eradicating them falls completely on county staff and the state's continued issuance of licenses to marijuana producers and processors impedes staff's ability to inventory and eliminate illegal marijuana producers and processors.

Whereas, the LCB continues to issue licenses during a moratorium; hopefully, the LCB will cease license issuance if marijuana production and processing is permanently prohibited.

Whereas, a significant number of counties and cities have already adopted permanent regulations either limiting or prohibiting marijuana businesses, collective gardens and cooperatives.

Whereas, the LCB promulgated regulations for the license application process, etc., in late 2013 and began accepting applications in November 2013; roughly two and one half years ago.

Whereas, the first, in state terms, "active" license issued to a producer or processor in Chelan County was in January, 2015; just over one year ago.

Whereas, Chelan County is not contemplating prohibitions on retail marijuana businesses, and until now, producers and processors could conduct business relatively unburdened by county regulations, which demonstrates the prohibitions herein enacted are well founded and necessary for public health, safety, and welfare reasons.

Whereas, neither production nor processing of marijuana are recognized by the Washington State Department of Revenue as constituting agriculture; WAC 458-30-200.

Whereas, WAC 314-55-020(11) promulgated by the LCB describes the state license process and includes the limitation that, "issuance or approval of a license shall not be construed as a license for, or an approval of, any violation of local rules or ordinances including but not limited to: building and fire codes, zoning ordinances, and business licensing requirements."

Whereas, Article XI, Section 11 of the Washington State Constitution provides that any county, city, town, or township may make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with general laws, which includes zoning regulations.

Whereas, the Washington State Attorney General issued an opinion on January 16, 2014, providing that zoning regulations prohibiting marijuana land uses and promoting public safety health or welfare and that bear reasonable and substantial relation to accomplishing that purpose would be a legitimate exercise of police power and would not be preempted by Initiative 502.

Whereas, Chelan County Code authorizes the board of commissioners to amend the development regulations from time to time consistent with the long term interests of the county.

Whereas, RCW 36.32.120 authorizes counties to make and enforce police and sanitary regulations, and declare what shall be deemed a nuisance, and to require prevention, removal, and abatement at owner's expense.

Whereas, notice of expedited review was sent to the state on January 15, 2016, and SEPA determination of non-significance was signed on January 15, 2016 and published on January 21, 2016.

Whereas, the Washington State Department of Commerce granted the request for expedited review by letter dated January 20, 2016, and authorized text amendment adoption as of January 29, 2016.

Whereas, based upon the above findings of fact, the board determines it necessary to prohibit the establishment, siting, location, and operation of licensed recreational marijuana or cannabis production and processing, medical marijuana or cannabis collective gardens and cooperatives, and prohibit implementation of state legislation including I 502, SB 5052, and HB 2136.

NOW, THEREFORE, BE IT RESOLVED as follows by the Chelan County Board of Commissioners:

1. The above recitals are hereby adopted as findings of fact and conclusions of law.
2. The board hereby adopts the record, findings, conclusions, and recommendations of the planning commission's January 27, and February 1, 2016, hearings, as modified herein.

3. The board hereby permanently prohibits the establishment, siting, location, permitting, licensing or operation of any and all recreational marijuana or cannabis production and processing; Chapter 69.50 RCW, including but not necessarily limited to RCW 69.50.325 through .390, and Initiative 502, SB 5052, and HB 2136 in unincorporated Chelan County.
4. The board hereby permanently prohibits the establishment, siting, location, permitting, licensing, or operation of any and all medical marijuana or cannabis collective gardens and cooperatives; Chapter 69.51A RCW, including but not necessarily limited to RCW 69.51A.085 and .250, and Initiative 502, SB 5052, and HB 2136 in unincorporated Chelan County.
5. No application for a building permit, occupancy permit, tenant improvement permit, fence permit, variance, conditional use permit, or other development permit or approval shall be accepted as either consistent or complete by any county department related to marijuana or cannabis production, processing, collective gardens or cooperatives.
6. Any and all marijuana or cannabis production, processing, collective gardens or cooperatives, is permanently prohibited in unincorporated Chelan County and all said uses are hereby declared public nuisances and nuisances per se.
7. Uses herein declared permanently prohibited that were lawfully established and in actual physical operation prior to September 29, 2015, are nonconforming and must cease, abate, and terminate no later than March 1, 2018. Structures associated with nonconforming uses shall also cease, abate, and terminate as of the same date.
8. Immediately effective during said two year termination period, all processors and producers, and owners and operators of collective gardens and cooperatives, must register with Chelan County as per a form created by the Community Development Department.
9. Chelan County finds and determines that enactment of these code amendments is necessary to expeditiously preserve the health, safety or welfare of the public and further determines that:
 - a. The amendments are necessary to resolve a public land use issue or problem.
 - b. The amendments are consistent with goals of the Growth Management Act, Chapter 36.70A RCW.
 - c. The amendments comply with or support comprehensive plan goals and policies and/or county-wide planning policies.
 - d. The amendments do not adversely affect lands designated as resource lands of long-term commercial significance or critical areas in ways that cannot be mitigated.
 - e. The amendments are based on sound land use planning practices and would further the general public health, safety and welfare.
 - f. The amendments complies with comprehensive plan land use designation/siting criteria.
 - g. The amendments are supported by and consistent with the capital facility element and the transportation element.
 - h. The amendments do not adversely affect surrounding land uses.

i. The amendments do not adversely affect the supply of land for various purposes which is available to accommodate projected growth over the twenty-year planning period covered by the comprehensive plan.

j. The amendments serve the interests of the general public including public health, safety, and welfare.

10. The text of the amendments to the code hereby enacted are contained in Exhibit A attached hereto and incorporated herein. If any inconsistency between the contents of Exhibit A and the body of this resolution is deemed to exist, the language of this resolution shall control.

11. Effective date. This amendment shall be effective immediately upon adoption. The moratorium enacted pursuant to Resolutions 2015-94 and 2015-102 continues as to retail operations and is otherwise hereby amended consistent herewith.

DATED at Wenatchee, Washington this 16th day of February, 2016.

CHELAN COUNTY BOARD OF COMMISSIONERS



Keith W. Goehner
KEITH W. GOEHNER, CHAIR
Doug England
DOUG ENGLAND, COMMISSIONER
Ron Walter
RON WALTER, COMMISSIONER

Attest:
Carlye Baity
Carlye Baity, Clerk of the Board
Dated: 2/16/16

Chapter 11.04; District Use Chart

Section 11.04.010 Purpose

A district use chart is established and contained herein as a tool for the purpose of determining the specific uses allowed in each use district. If a proposed use is not listed the administrator will determine if the proposed use is similar to one that is already enumerated in the use chart and may therefore be allowed, subject to the requirements associated with that use and all other applicable provisions of the Chelan County Code.

Production, processing, collective gardens, and cooperatives, of any marijuana or cannabis products, all as defined pursuant to RCW 69.50 and 69.51A, are each prohibited and not allowed in any zone within the unincorporated areas of Chelan County.

Section 11.04.020 District Use Chart

USE/ACTIVITY	RR20	RR10	RR5	RR2.5	RW	RRR	RV	RC	RI	RP	AC	FC	MC
Agriculturally Related Industry	CUP ²	CUP ²	CUP ²	CUP ²					P		P		

² ~~Uses licensed by the Washington State Liquor Control Board for the operation of marijuana producers, processors, and retailers as required by Initiative 502 enacted in 2012, Chapter 69.50 RCW, are exempt from conditional use permit processing.~~

Chapter 11.97; Nonconforming Lots, Structures and Uses

Section 11.97.030 ~~Termination Discontinuance~~ of nonconforming uses.

(1) Discontinuance or Vacation: Subject to subsection (2) herein, if a nonconforming use has been discontinued or vacated for a period of twelve consecutive months or greater, the nonconforming status is terminated, and any future use of the land or structures shall be in conformity with the provisions of the zoning district in which it is located.

(2) Declaration and Amortization: Marijuana or cannabis production and processing uses conducted pursuant to Chapter 69.50 RCW or Chapter 69.51A, and associated structures, are hereby declared nonconforming and are each prohibited and not allowed in any zone in unincorporated Chelan County pursuant to Section 11.04, and shall cease, abate, and terminate on or before March 1, 2018. Said uses and associated structures are not eligible for remodeling, alterations, repairs, expansion, or intensification.

Section 11.97.060 Completion of a building/structure/activity.

Subject to 11.97.030(2), nothing contained in this chapter shall require any change in plans, construction, alterations, or designated uses of a building/structure specified in a complete application for a development permit submitted prior to the adoption of the resolution codified in this title. Improvements and uses authorized by a recorded motion or resolution of the board of county commissioners, or any permit issued by the county prior to the effective date of the resolution codified in this title may be developed as set forth in the permit. If the permit becomes invalid prior to development of improvements or uses, the provisions of this chapter shall be in effect on the subject property.