

**BOARD OF COUNTY COMMISSIONERS
WALLA WALLA COUNTY, WASHINGTON**

ORDINANCE NO. 461

AN ORDINANCE RELATING TO MARIJUANA LAND USES IN RESPONSE TO NEW STATE LAWS RELATING TO MEDICAL MARIJUANA; PROHIBITING COOPERATIVES, MARIJUANA PRODUCERS, MARIJUANA PROCESSORS, MARIJUANA RETAILERS, AND THE SALE OF MARIJUANA AND/OR MARIJUANA PRODUCTS IN UNINCORPORATED WALLA WALLA COUNTY.

WHEREAS, the Washington legislature approved and the Governor signed certain sections of Second Substitute Senate Bill 5025 amending the regulations in RCW 69.51A Medical Cannabis, RCW 66.08 Liquor and Cannabis Board – General Provisions, and RCW 69.50 Uniformed Controlled Substances Act some of which went into effect on July 1, 2016 ; and

WHEREAS, marijuana is currently listed as a Schedule I Controlled Substance of the Controlled Substances Act, 21 USC 812; and

WHEREAS, I-502 allowed the Washington State Liquor Control Board to license marijuana producers “to produce marijuana for sale at wholesale to marijuana processors and other marijuana producers” (I-502, Sec. 4(1)); and

WHEREAS, I-502 allowed the Washington State Liquor Control Board to license marijuana processors to “process, package and label usable marijuana and marijuana-infused products for sale at wholesale to marijuana retailers” (I-502, Sec. 4(2)); and

WHEREAS, I-502 allowed the Washington State Liquor Control Board to license marijuana retailers to “sell usable marijuana and marijuana-infused products at retail in retail outlets” (I-502, Sec. 4(3)); and

WHEREAS, according to the Municipal Research and Services Center (MRSC), “As of July 1, 2016, the production and marketing of medical marijuana is also incorporated into the same regulatory framework as recreational marijuana, with some variations such as the allowance of medical marijuana cooperatives”; and

WHEREAS, the provisions with the greatest implications for medical marijuana – the elimination of collective gardens and medical marijuana dispensaries, the addition of cooperatives, and more stringent recognition card requirements – went into effect on July 1, 2016; and

WHEREAS, the Liquor and Cannabis Board has adopted new rules for issuing licenses to marijuana operations which were effective State-wide beginning July 1, 2016;

NOW THEREFORE

BE IT ORDAINED, by the Walla Walla County Board of County Commissioners that:

Section I. The Board of County Commissioners Makes the Following Findings of Fact and Conclusions of Law.

A. Findings of Fact.

1. Walla Walla County Code 17.16.010, last modified in 2014, states:

The use of a property is defined by the activity for which the building or lot is intended, designed, arranged, occupied or maintained. All applicable requirements of this code, or other applicable state or federal requirements, shall govern a use located in unincorporated Walla Walla County. Any recreational marijuana land use including, but not limited to, production, processing, storage, and retail sale of recreational marijuana and recreational marijuana-derived products are prohibited land uses in unincorporated Walla Walla County.

2. Walla Walla County engaged Planning Consultant Bill Stalzer to review changes in State law relating to medical marijuana. Mr. Stalzer produced a memorandum on June 24, 2016.

3. Under the new State laws, the following individuals and entities can grow marijuana for medical purposes:

- A. Marijuana producers licensed by the Washington State Liquor and Cannabis Board (“WSLCB”)
- B. Qualifying patients 21 or older enrolled in the state medical marijuana authorization database and designated providers may grow up to 15 plants and possess a combination of 48 ounces of marijuana-infused product in solid form, 3 ounces of useable marijuana, 216 ounces of marijuana-infused product in liquid form, or 21 grams of marijuana concentrates, all for their use in one housing unit provided that the activity cannot be readily seen or smelled from a public place or the private property of another housing unit.
- C. Qualifying patients 21 or older not enrolled in the state medical marijuana authorization database may grow up to 4 plants and possess 6 ounces of usable marijuana for their use in one housing unit provided that the activity cannot be readily seen or smelled from a public place or the private property of another housing unit.
- D. Cooperative members. Members of a cooperative may grow marijuana at the cooperative location in a quantity of up to the total amount of plants for which they are authorized on



their recognition cards, but no more than 15 plants. They also may possess at the cooperative location up to 72 ounces of usable marijuana produced by the authorized number of plants.

Cooperative members must:

- be a qualifying patient 21 years or older or a designated provider;
- have a valid recognition card;
- participate in only one cooperative;
- not grow plants elsewhere;
- provide assistance in growing plants at the cooperative location; and
- not sell, donate, or otherwise provide marijuana or marijuana products to non-members

4. Under the new State laws, the requirements for Cooperatives are:

- a. Licensed or registered by the WSLCB
- b. Limited in number to 4 members (qualifying patients and designated providers only)
- c. Limited to one cooperative per property tax parcel
- d. Located in the domicile of one of the members
- e. Can grow up to the total number of plants authorized for the 4 members, but not exceeding 60 plants
- f. Cannot be located:
 - Within 1 mile of a marijuana retailer
 - Within the smaller of:
 - 1,000 feet of the perimeter of an elementary or secondary school, playground, recreation center or facility, child care center, public park, public transit center, library, or any game arcade that is not restricted to persons 21 or older; or
 - the area restricted by ordinance if the city, county or town allows cooperatives
 - Where prohibited by a city, county or town zoning ordinance. RCW 69.51A.250.

5. Under the new State laws, the following entities and individuals may sell medical marijuana:

- a. An existing marijuana retailer with a medical marijuana endorsement
- b. A new medical marijuana retailer that has a marijuana retail license, meets the locational requirements for a marijuana retailer, and has a medical marijuana endorsement
- c. An existing medical marijuana dispensary that obtains a marijuana retail license, meets the locational requirements for a marijuana retailer, and has a medical marijuana endorsement

6. On June 30, 2016, the Board of County Commissioners adopted Ordinance 448 which imposed interim zoning and a moratorium until December 30, 2016. The interim zoning prohibited cooperatives, marijuana producers, marijuana processors, marijuana retailers, and the sale of marijuana and/or marijuana products in unincorporated Walla Walla County. The Moratorium restricted any project permit or application for a structure or use/operation of property prohibited by the ordinance from being accepted or granted during the pendency of Ordinance 448.

7. Ordinance 448 was intended to provide the County with additional time to review the effects of new State laws related to medical marijuana and study, draft, hold public hearings, and adopt the appropriate regulations to address any new uses allowed by the revised State laws related to medical marijuana.

8. The Board of County Commissioners held a properly advertised public hearing regarding Ordinance 448 on August 2, 2016, as required by RCW 36.70A.390.

9. The Planning Commission held a meeting on August 3, 2016 to discuss the changes in RCW 69.51A related to medical marijuana.

10. Community Development Department staff and the County's consultant held a public informational meeting on October 5, 2016.

11. The Planning Commission held a public workshop on October 5, 2016.

13. A Notice of Public Hearing for a November 2 Planning Commission Public Hearing was published in the Waitsburg Times on October 27, 2016, in the Walla Walla Union Bulletin on October 23, 2016 and in the Tri-City Herald on October 24, 2016. This notice was published on the Community Development Department website on October 21, 2016.

14. On November 2, 2016, the Planning Commission held a public hearing to consider the proposed amendments. The Planning Commission voted to approve the proposed amendments. Planning Commission Resolution 16-06, forwarding the proposed amendments, was signed on November 9, 2016.

15. On November 4, 2016, a copy of the proposed amendments was sent to the Washington State Department of Commerce with an expedited review request. The Department of Commerce confirmed by email on November 29 that expedited review was granted and the requirements of RCW 36.70A.106 were satisfied. No comments were received from the Department of Commerce or any public agency during the State agency review period.

16. On November 4, 2016, a SEPA Determination of Non-Significance (DNS) was issued on the proposed amendments by the County's SEPA Responsible Official by submittal to the Washington State Department of Ecology SEPA Register. On November 4, the DNS was sent to consulting agencies for review and comment and mailed to members of the public who had provided written or oral comment on the proposed amendments at the November 2 public hearing. The DNS was published in the Walla Walla Union Bulletin on November 4, in the Tri-City Herald on November 8, in the Waitsburg Times on November 10, and on the Community Development Department website on November 4. No appeals of the threshold determination were filed.

17. On December 5, 2016, the Board of County Commissioners adopted Resolution 16-327, setting a public hearing on this proposal for December 19, 2016.

18. On December 8, 2016, a Notice of Public Hearing for the December 19 Board of County Commissioners public hearing was published in the Walla Walla Union Bulletin, Tri-City Herald, and Waitsburg Times. This notice was published on the Community Development Department website and mailed to parties who commented during Planning Commission review on December 7.

19. On December 19, 2016, the Board of County Commissioners held a public hearing on the proposed regulations.

B. Conclusions of Law:

1. Walla Walla County Code 14.15.030 authorizes the County to amend development regulations more than once per year as determined by a majority vote of the Board of County Commissioners to be in the long-term interests of the county.

2. With regard to Walla Walla County Code Section 14.15.070C(3):

a). **Criteria:** The amendment is consistent with the Comprehensive Plan.

Discussion: Comments by County Sheriff Turner and Sgt. Good at the Planning Commission workshop in October indicated that the Sheriff's Office currently has limited resources to address the variety of public safety events and complaints they respond to every day. Even though the state may have the legal responsibility for enforcing marijuana laws, Sheriff Turner pointed out that county citizens typically call the Sheriff's Office if they believe someone is breaking the law, regardless of whether or not the County is responsible for enforcing it. He also stated that since cooperatives must be located in a cooperative member's house, the potential for break-ins is substantial regardless of the state requirement for extensive security measures. This likelihood is further increased because many houses are located in sparsely populated, remote areas of the county.

The potential for break-ins and the recent seizure of a large number of marijuana plants in Columbia County, both mentioned by Sheriff Turner at the October 5th Planning Commission workshop meeting, are examples of public safety issues related to marijuana. Allowing medical marijuana cooperatives, regardless of zoning district limitations or special conditions, would place an additional burden on County law enforcement. In addition, staff has located a recent news story from Chelan County, involving a theft from a commercial marijuana operation, which indicates that these types of issues have occurred in other counties. (The Chelan County Sheriff's Office news release was issued on October 21, 2016.)

In response to a question asked of staff by the Planning Commission at its August meeting, Sheriff Turner also discussed the cost of adding another deputy to his staff as an effort to provide more resources to respond to the increased need for law enforcement services if

cooperatives were allowed in the unincorporated areas of the County. Without these additional resources, Sheriff Turner felt that either he would not have adequate staff to pursue marijuana-related issues or that the department's ability to respond to other issues affecting public safety could be compromised.

The Planning Commission, in its decision earlier this year recommending denial of a code amendment to allow marijuana production and processing uses in the county and referencing Ordinance 425, concluded that such uses would conflict with goals and policies in the Comprehensive Plan.

The Walla Walla County Comprehensive Plan includes the following relevant policies:

- Land Use Policy LU-5: Encourage land use patterns that provide for the efficient use of public funds.
- Land Use Policy LU-6: Support land use development patterns which protect the public health, safety, and welfare.
- Public spending priorities for County services within rural areas are to maintain or upgrade services at rural level standards to existing, not new, development (Rural Lands Policy RL-13).

Conclusion: Allowing marijuana cooperatives, or marijuana producers, processors and retailers, and the growing or selling any type of marijuana, will create a potential burden on the law enforcement services of the County, and conflict with policies in the County's Comprehensive Plan.

b). **Criteria:** The amendment meets a definable public need.

Discussion: During discussion of medical marijuana cooperatives at the Planning Commission meeting in August, it was pointed out that at least one marijuana retailer in the City of Walla Walla has received a medical endorsement from the State to sell medical marijuana. Consequently, if a person has a medical marijuana authorization form, he or she can obtain it from an existing approved marijuana retailer in the area. Alternatively, RCW 69.51A allows qualifying patients and designated providers to grow and possess a limited amount of marijuana in their own domicile if they need it for medical reasons.

Conclusion: Given both the public safety and potential impact to law enforcement concerns discussed in the preceding criteria, and the ability of residents in the unincorporated parts of the County who have an authorization form to obtain or grow marijuana for medical purposes, prohibiting marijuana cooperatives, producers, processors, and retailers meets a definable public need by protecting the safety of the general public. Qualifying patients and designated providers have access to medical marijuana through other sources, particularly within the City of Walla Walla.

c) Criteria: The amendment is in the long term interest of the county.

Discussion: Unlike the state laws and regulations for marijuana retailers, there is no state limit on the number of medical marijuana cooperatives in a city or county. Consequently, if cooperatives were an allowed marijuana land use, an unlimited number of cooperatives could be located throughout the unincorporated parts of the County. The size of the unincorporated parts of the county makes it impractical to ensure that cooperatives comply with the requirements of RCW 69.51A much less any zoning conditions imposed by the County. Prohibiting the potential proliferation of cooperatives in the county is in the long term interest of the County.

The Planning Commission, in its recommendation in June of this year on the application mentioned previously, determined that allowing marijuana production and processing land uses was not appropriate for consideration at that time. One of the reasons cited was the Commission's 2014 recommendation that only industrial zones near the City of Walla Walla were appropriate for marijuana land uses. Since cooperatives must be located in a domicile and since residential uses are not allowed in industrial zones, cooperatives could not be located in industrial zones. Prohibiting cooperatives in all land use districts is consistent with the Commission's earlier decision and is in the long term interest of the county.

Additionally, Conclusion 2 in Ordinance 425, which prohibited all recreational marijuana uses in the county, states: "The Board is of the opinion that allowing recreational marijuana land uses will have a negative impact on the unincorporated areas of Walla Walla County and the agencies of Walla Walla County." Furthermore, Conclusion 7 of Ordinance 425 noted that "Land uses related to marijuana will likely have a negative impact on County law enforcement services. Public spending priorities for County services within rural areas are to maintain or upgrade services at rural level standards to existing, not new, development (Comprehensive Plan Policy RL-13)."

Conclusion: Prohibiting cooperatives, and continuing to prohibit marijuana producers, processors and retailers in all zoning districts is consistent with the County's earlier decision that recreational marijuana will have a negative impact on the unincorporated areas of the County, and is in the long term interest of the County. Even though the intended end user (recreational or medical) may be different, the producer, processor and retailer land uses are the same as those prohibited by Ordinance 425.

Section II. The Board of County Commissioners Adopts the Following Amendments to Walla Walla County Code:



17.16.010 Establishment of uses.

The use of a property is defined by the activity for which the building or lot is intended, designed, arranged, occupied or maintained. All applicable requirements of this code, or other applicable state or federal requirements, shall govern a use located in unincorporated Walla Walla County. ~~Any recreational marijuana land use including, but not limited to, production, processing, storage, and retail sale of recreational marijuana and marijuana products are prohibited land uses in unincorporated Walla Walla County.~~ Marijuana cooperatives, marijuana producers, marijuana processors, marijuana retailers, and the sale of marijuana and/or marijuana products are prohibited land uses in unincorporated Walla Walla County.

17.08.332A – Marijuana

See the definition in RCW 69.50.101 as it exists or is hereafter amended.

17.08.332B – Marijuana cooperative

Those entities authorized pursuant to RCW 69.51A.250 as it exists or is hereafter amended. See the definition of “cooperative” in WAC 314-55-010 as it exists or is hereafter amended.

17.08.332C – Marijuana processor

See the definition in RCW 69.50.101 as it exists or is hereafter amended.

17.08.332D – Marijuana producer

See the definition in RCW 69.50.101 as it exists or is hereafter amended.

17.08.332E – Marijuana products

See the definition in RCW 69.50.101 as it exists or is hereafter amended.

17.08.332F – Marijuana retailer

See the definition in RCW 69.50.101 as it exists or is hereafter amended.

17.08.332AG – Marina

See the definition in Section V of the Walla Walla County Shoreline Management Plan.

Section III. Effective Date and Savings.

This Ordinance is effective upon signing.

Section IV. Severability.

If any section, subsection, paragraph, sentence, clause or phrase of this Ordinance is declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining parts of this ordinance.

Section V. Publication.

This Ordinance will be published by an approved summary consisting of the title.

PASSED by the Walla Walla County Board of County Commissioners in regular session at Walla Walla, Washington, then signed by its membership and attested by its Clerk in authorization of such passage this 23rd day of December, 2016.

Attest:

Diane L. Harris

Diane L. Harris, Acting Clerk of the Board

James K. Johnson
James K. Johnson, Chairman, District 1

Perry L. Dozier
Perry L. Dozier, Commissioner, District 2

James L. Duncan
James L. Duncan, Commissioner, District 3

*Constituting the Board of County Commissioners
of Walla Walla County, Washington*

Approved as to form

Jesse D. Nolte
Jesse D. Nolte, Deputy Prosecuting Attorney

