

BOARD OF COUNTY COMMISSIONERS
DOUGLAS COUNTY, WASHINGTON

RE: Production and Processing of)
Recreational and Medical Marijuana in) Ordinance TLS 16-05-34C
Unincorporated Douglas County, WA)

WHEREAS, this Board adopted Resolution TLS 15-45C on September 8, 2015 establishing a Moratorium on the siting licensed recreational and medical marijuana production facilities and processing facilities within the unincorporated area of Douglas County and prohibiting the Department of Transportation and Land Services from accepting as complete any application for a building permit, occupancy permit, tenant improvement permit, fence permit, or other development permit or approval for recreational and medical marijuana production facilities and processing facilities;

WHEREAS, this Board adopted Resolution TLS 15-45E following a public hearing on September 22, 2015 that re-adopted the findings in Resolution TLS 15-45C;

WHEREAS, this Board adopted Resolution TLS 16-04B on March 1, 2016 extending the moratorium for an additional six month period;

WHEREAS, this Board adopted Resolution TLS 16-29B on August 23, 2016 extending the moratorium for an additional six month period, and twelve months for medical marijuana cooperatives;

WHEREAS, this Board has identified the following issues as of concern:

1. Lack of state-shared revenue
2. Odor from growing and processing
3. Light and glare impacts
4. Risk of upset/hazards
5. Impacts on adjoining uses, especially residential.

WHEREAS, this Board has proposed a draft code that would address the above concerns, where possible;

WHEREAS, the Douglas County Planning Commission conducted a public hearing on the proposed draft code on August 10, 2016 after which the Planning Commission voted 3 to 1 to recommend that the draft code be adopted. This motion failed as state law requires the affirmation vote of at least 4 members of the planning commission to recommend changes to official controls and therefore the Planning Commission's recommendation is to not adopt the proposed code;

WHEREAS, this Board conducted a public meeting on September 6, 2016 to consider the recommendation of the Planning Commission. The Board took action to reject the recommendation of the Planning Commission and set a public hearing for September 27, 2016. The Board continued that public hearing to November 1, 2016;

WHEREAS, in addition to the above recitations that are cited for the record of findings, this Board additionally finds that:

1. Initiative 502 was adopted by the voters of Washington state in 2012. The State of Washington, through its legislative process, has adopted amendments and related statutes since the passage of the initiative.
2. The state Liquor and Cannabis Board has adopted rules implementing the laws relating to recreational and medical marijuana and have established a state licensing program.
3. The state Attorney General, in a 2014 opinion, advised that local governments are not pre-empted by state law in regulating marijuana-related activities, including having the authority to prohibit those activities.
4. Marijuana is not defined as an agricultural crop by the State of Washington, which licenses marijuana-related activities. Marijuana cannot be treated the same as agriculture unless and until this definition changes.
5. Marijuana production is not covered by the provisions relating to the practice of agriculture addressed in Douglas County Code of the West. The nuisance protection provisions of the Code of the West do not apply to marijuana-related activities.
6. Douglas County initiated a sixty-day review under RCW Chapter 36.70A on April 19, 2016. A Determination of Nonsignificance under the State Environmental Policy Act was entered into the record on April 19, 2016.
7. The Board of Commissioners hosted an open house on the draft rules on June 8, 2016. Notice of the open house was mailed to entities holding a license for marijuana production and/or processing, and to persons within approximately 1320 feet of those facilities. Additional notice was distributed via email to an interested parties list that includes approximately 104 email addresses. Approximately 34 persons signed the attendance roster at the entry to the open house.
8. The Douglas County Planning Commission held a workshop on the draft rules during its July 13, 2016 public meeting. The Planning Commission then held a public hearing on August 10, 2016 to review the files on this matter, accept testimony, review the written comments and formulate a recommendation on the proposal. Although the Planning Commission failed to present an affirmative recommendation on adopting the proposed rules, a majority of those voting favored adoption.
9. This Board conducted a public hearing on September 27, 2016 to review the record of the Planning Commission, consider additional information submitted to the record following the Planning Commission meeting and to accept testimony from interested persons. The Board then continued the public hearing to

November 1, 2016 to consider modifications to the original proposal presented by the Board to the Planning Commission.

10. This Board drafted revisions to the original proposal to address some of the issues presented in the September 27, 2016 public hearing, and reviewed those revisions with concerned property owners and growers invited to participate in two focus groups.
11. The draft rules address the areas of concern previously identified and recorded by the Board of Commissioners. These rules will serve the public interest by protecting properties and persons from potentially adverse marijuana-related industrial activities. The rules allow new marijuana production and processing throughout a large geographic portion of the county, while granting nonconforming rights to existing operations.
12. This Board cannot grant extraordinary rights to recreational marijuana activities that might become nonconforming as a result of this ordinance without granting those rights to all activities in the same zoning district. RCW 36.70.770 states that "All regulations shall be uniform in each zone, but the regulations in one zone may differ from those in another zone." Nonconforming provisions are important to long term community development as they allow uses to continue while recognizing a change in the community's expectations, circumstances and needs through time.
13. The rules will promote the public health, safety and general welfare of the citizens of Douglas County.

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

1. The amendments to Douglas County Code titles 14 and 18 set forth in attached Exhibit A are adopted.
2. The moratorium on the siting of licensed recreational and medical marijuana production facilities and processing facilities within the unincorporated area of Douglas County is repealed as of the effective date of this ordinance.
3. The moratorium on cooperative gardens (RCW 69.51A.250) shall continue to be effective as approved in Resolution TLS 16-29B.

This ordinance shall be in full force and effect on upon adoption.

ADOPTED this 1st day of November 2016 at East Wenatchee, Washington.



DOUGLAS COUNTY, WASHINGTON
BOARD OF COUNTY COMMISSIONERS

A blue ink signature of Steven D. Jenkins, written over a horizontal line.

Steven D. Jenkins, Chair

A blue ink signature of Dale Snyder, written over a horizontal line.

Dale Snyder, Vice Chair

ATTEST:

A blue ink signature of Dayna Prewitt, written over a horizontal line.

Dayna Prewitt, Clerk of the Board

A blue ink signature of Ken Stanton, written over a horizontal line.

Ken Stanton, Commissioner

TLS-16-05-34C

Exhibit A

Amend Definition 14.98.037 Agriculture.

“Agriculture” means the tilling of the soil; the raising of crops; forestry; horticulture; nonretail greenhouses, nurseries and gardening; and the keeping and raising of livestock and poultry. “Agriculture” does not include marijuana.

Add:

18.27.050 F. Marijuana production and/or processing for any purpose.

18.28.050 H. Marijuana production and/or processing for any purpose.

18.30.020 O. Marijuana production and processing facilities subject to the standards of DCC chapter 18.XX.

18.31.020 S. Marijuana production and processing facilities subject to the standards of DCC chapter 18.XX.

18.32.050 H. Marijuana production and/or processing for any purpose.

18.34.050 G. Marijuana production and/or processing for any purpose.

18.36.020 S. Marijuana production and processing facilities subject to the standards of DCC chapter 18.XX.

18.40.020 S. Marijuana production and processing facilities subject to the standards of DCC chapter 18.XX.

18.60.020 W. Marijuana production and processing facilities subject to the standards of DCC chapter 18.XX

New Chapter 18.XX Marijuana Production, Processing and Retail Sales

18.XX.010 Purpose.

The purpose of this chapter is to regulate the location and design of state-licensed marijuana producers, processors, and retailers allowed under RCW Chapter 69.50 and applicable state administrative rules, and to mitigate impacts of such uses on neighboring properties.

18.XX.020 Applicability.

This chapter applies to marijuana producers, processors, and retailers licensed by the State of Washington in unincorporated Douglas County.

18.XX.030 Definitions.

Terms are defined in DCC Chapter 14.98, RCW Chapter 69.50 and WAC Chapter 314-55, as each now exists or may hereafter be amended. Marijuana is not considered an agricultural product under the provisions of RCW 82.04.213. The definition of “agriculture” in DCC 14.98.037, and other agriculture-oriented definitions in DCC Chapter 14.98, does not include marijuana production and marijuana processing.

18.XX.040 Permitted zoning districts.

A. Marijuana production and processing may be permitted only in the following zoning districts:

1. Rural Resource 5 (RR-5)
2. Agricultural Commercial 10 (AC-10)
3. Rural Resource 20 (RR-20)
4. Dryland Agriculture (A-D)
5. General Industrial (I-G)

B. Marijuana production and processing are prohibited in the following zoning districts:

1. Rural Recreation (R-REC)
2. Rural Resource 2 (RR-2)
3. Rural Service Center (RSC)
4. Commercial Agricultural 5 (AC-5)
5. Recreation Overlay (R-O)
6. Master Planned Resort (MPR)

C. Marijuana retailers may only be permitted within urban growth areas subject to the provisions of the applicable municipal codes of the city or town within the urban

growth area. Buildings used for retail sales of marijuana outside of an urban growth area may not be expanded or enlarged, or otherwise modified unless the modification is necessary to comply with life safety provisions of the Douglas County Code and the adopted International Codes.

18.XX.050 Development standards.

- A. Marijuana producers, processors and retailers shall be subject to the development standards of the underlying zoning district, the Douglas County Code, and all other local and state laws except as modified in this chapter.
- B. No marijuana producer, processor or retailer shall be permitted within a dwelling unit or within a building physically attached to a dwelling unit.
- C. No marijuana producer, processor or retailer shall emit excessive odors detectable at any lot line of the property of the marijuana production, processing or retail sales.
- D. Marijuana production and processing in all zoning districts shall be within an entirely enclosed building, except that outdoor production may be permitted in the AC-10, RR-20 and A-D districts subject to the following setback/buffer standards:
 - 1. At least one mile (5,280 feet) from an urban growth area boundary, and
 - 2. At least one-half mile (2,640 feet) from an off-premise residence, and
 - 3. At least one-half mile (2,640 feet) from an Rural Recreation (R-REC), Rural Service Center (RSC) or Master Planned Resort (MPR) zoning district, and
 - 4. At least one-half mile (2,640 feet) from any individual lot (residential) in a cluster division or a clustering of existing lots, excluding reserve lots.

The above setbacks/buffers apply to all outdoor production and processing activities, and outdoor areas required by the state of Washington to be secure, except for access driveways and parking areas. Distances shall be measured in the most direct manner.

Outdoor marijuana production and processing is not allowed in an I-G district.

E. All production and processing operations must be located at least one-thousand (1,000) feet from a public park owned and/or operated by a city, county, special purpose or utility district, state agency or federal agency. 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 public park.

F. Sources of light for marijuana production and processing facilities and operations, including security lighting, shall be designed and shielded so as to keep light from directly projecting over property lines. Buildings shall be constructed with opaque materials or otherwise designed to eliminate fugitive light and glare visible off-premise.

G. Production and processing buildings shall be designed and otherwise oriented to mitigate noise impacts on neighboring properties. Methods of reducing noise impacts from heating, ventilation and conditioning equipment may include muffling, dampening, shielding and/or deflecting equipment noise.

H. Applicants for marijuana production and processing facilities must submit verification of a lawful source of water (e.g. irrigation/water district, water right and metered well/surface water withdrawal) that will be used for production and processing.

I. Off-street parking shall be provided in accordance with DCC chapter 20.42

J. Stormwater runoff shall be managed in accordance with DCC 20.34 and DCC 20.36.

18.XX.070 Existing outdoor production and processing.

Outdoor marijuana production and processing businesses lawfully permitted by Douglas County prior to adoption of this chapter on November 1, 2016 may continue in accordance with the terms of permit approval. Outdoor facilities, such as fences and security infrastructure, supporting outdoor production that do not meet the setback/buffer requirements of DCC 18.XX.050 D. may be maintained with ordinary care subject to the provisions of DCC 18.82. The expansion of outdoor production area and additional outdoor plant canopy is prohibited within the setback/buffer areas in DCC 18.XX.050 D.

18.XX.080 Application for county development permits—Timing.

Applicants for a marijuana producing, processing, or retailing license from the State of Washington may apply for county development permits at any time. Applicants who wish to apply for county permits, and commence construction of facilities for producing, processing, or retailing marijuana under Chapter 69.50 RCW, and prior to obtaining approval as a state-licensed marijuana producer, processor, or retailer do so at their own risk. Application for and/or issuance of a license from the State of Washington does not vest the activity under the Douglas County code.

18.XX.090 Enforcement.

Enforcement of violations of this title shall follow the procedures in DCC chapter 14.92.