

Puget Sound Seed Growers Association

2017 Continental Pl. #6 • Mount Vernon, Washington 98273
Phone (360) 424-7327 • FAX: (360) 424-9343

February 6, 2019



Dear Skagit County Commissioners,

*Hand delivered
by: Don McMoran*

On behalf of the Puget Sound Seed Growers and the Western Washington Small Seed Advisory Committee we are pleased to bring forth the attached draft ordinance to be reviewed by and implemented into law by Skagit County. This ordinance is the work of a two year effort by the Puget Sound Seed Growers and the Western Washington Small Seed Advisory Committee to reduce conflict between the ten million dollar Skagit County vegetable seed industry and a select few individuals that do not to work cooperatively with the Skagit County vegetable seed industry.


For more information on brassica production and regulations enacted by the state and industry I encourage you to read through a Power Point by WSU NWREC, Plant Pathology Professor Dr. Lindsey du Toit

<https://s3.wp.wsu.edu/uploads/sites/2073/2014/03/BrassicaQuarantineDistrict.pdf>

As noted in Dr. du Toit's Power Point there are strong protections under state law to protect Skagit County vegetable seed producers however those protections only serve commercial seed producers and not home owners who may be unwilling to work with the industry. This was the case with one individual in Skagit County in the summer of 2017. Ultimately, the issue was resolved and little or no cross pollination occurred but the incident did strike fear into the vegetable seed producers and growers to cooperatively work through a Skagit County ordinance that has the potential to resolve future conflicts in a fast, fair and effective manner.

Ninety nine percent of the time homeowners are more than willing to work with the vegetable seed industry but the one percent that isn't cooperative is enough to ruin the industry as well as our world reputation as a premier location to grow hybrid cabbage seed. We would appreciate your attention to this matter and if you have any questions or comments feel free to contact me.

Sincerely,


Kirby Johnson
President

AN ORDINANCE PROMOTING COEXISTENCE AMONG COMMERCIAL AND NON-COMMERCIAL GROWERS OF BRASSICACEAE FAMILY PLANTS

WHEREAS, commercial agriculture is Skagit County's largest industry, and support for a viable commercial agriculture in the Skagit Valley is one of the central objectives set forth by Skagit County's Comprehensive Plan; and

WHEREAS, Skagit County is a global center of commercial seed production, in part a function of our Valley's location on the U.S. West Coast, which limits the introduction of wind-borne pollen into the regional airshed and resultant gene contamination in crops grown for commercial seed production; and

WHEREAS, a significant portion of Skagit County's commercial seed production industry involves plants of the *Brassicaceae* family, which have the capacity to cross-pollenate among other *Brassicaceae* family plants, thereby causing genetic contamination of seeds grown for commercial production with the resultant potential to cause significant economic loss for Skagit County farmers; and

WHEREAS, this requires that those who grow *Brassicaceae* family plants to coordinate the planting of such crops in order to avoid gene contamination; and

WHEREAS, commercial growers of *Brassicaceae* family plants are required by a Brassica Regulatory Scheme, established by RCW Chapter 15.51, to coordinate their growing operations in advance of each growing season, ensuring adequate separation between *Brassicaceae* family crop production within Brassica Production Districts; and

WHEREAS, non-commercial growers such as residential homeowners are not required to participate in the Brassica Regulatory Scheme, a regulatory oversight that has the potential to cause significant damage to agricultural seed crop production within Skagit County; and

WHEREAS, time is of the essence when a Flowering Brassica is detected adjacent to a commercial brassica seed crop, and a speedy remedy under the law is essential in the event that diligent inter-landowner communication does not resolve the issue; and

WHEREAS, a nuisance is defined by the law as a use of one's property in a manner that unreasonably interferes with the rights of neighboring property owners or the public; and

WHEREAS, the Skagit County Board of Commissioners desires to create a time-sensitive process to de-conflict the commercial and non-commercial production of *Brassicaceae* family crops in Skagit County, giving due regard to commercial growers' economic expectations and non-commercial growers property rights, as well as a

mechanism to seek rapid judicial relief in the event that inter-landowner dialogue does not resolve the conflict.

NOW, THEREFORE BE IT ORDAINED that the Skagit County Board of Commissioners hereby adopts the following ordinance, to be codified in Skagit County Code Title 9, as provided in the attached **Exhibit 1**.

IN TESTIMONY WHEREOF, we set our hands and affix the official seal of our office.

DATED this _____ day of _____ 2018.

BOARD OF COUNTY COMMISSIONERS
SKAGIT COUNTY

Ron Wesen, Chair

Kenneth A. Dahlstedt, Commissioner

Lisa Janicki, Commissioner

ATTEST

Linda Hammons, Clerk of the Board

Approved as to form

Will Honea, Deputy Prosecuting Attorney

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EXHIBIT 1

9.56.010 Purpose. It is the purpose of this ordinance to ensure that both commercial and non-commercial growers of plants within the *Brassicaceae* family in Skagit County can reasonably coexist, by creating a mechanism to timely and reasonably provide notice and opportunity to cure as well as a mechanism to seek rapid judicial relief in the event that inter-landowner communication does not resolve the conflict arising from proximate brassica crops.

9.56.020 Definitions

"Brassica" means all plants of the *Brassicaceae* family identified in Appendix "A" hereto, and any genetic derivatives thereof whether or not named as set forth in Appendix A.

"Flowering Brassica" means those plant species identified in Appendix A that have bolted or flowered, transitioning from vegetative to reproductive growth.

"Brassica Regulatory Scheme" means RCW Chapter 15.51 and WAC 16-326 including any future amendments thereto.

"Commercial Brassica Seed Crop" means a brassica crop planted in accordance with the Brassica Regulatory Scheme and grown for the purpose of producing commercially-viable seed

"Nuisance Flowering Brassica" means a Flowering Brassica grown and maintained outside the Brassica Regulatory Scheme in a property immediately adjacent to a Property planted in accordance with the Brassica Regulatory Scheme, in circumstances where notice and opportunity to cure has been afforded as set forth below.

9.56.030 Nuisance Declared. The growing and maintenance of Flowering Brassica within Skagit County outside the Brassica Regulatory Scheme is hereby declared a nuisance to the extent described below. This section shall apply to those lands zoned Agricultural-Natural Resource Land (SCC 14.16.400) lying west of the westernmost boundary of the Town of Hamilton and parcels zone otherwise within one (1) mile straight line distance thereof.

9.56.040 Abatement Remedy. A party aggrieved by a violation of SCC 9.56.030 may seek redress and abatement according to the following remedy, and a Flowering Brassica shall not be deemed a Nuisance Flowering Brassica unless the following notice and opportunity to cure provisions have been satisfied, which provisions shall be strictly interpreted.

(1) Notice. No Flowering Brassica on a property shall be deemed a nuisance for the purpose of this Section unless notice has been furnished to the landowner or tenant in possession of the property to be charged with a nuisance under this section prior to the planting of the Commercial Brassica Seed Crop. Notice shall be deemed sufficient if accompanied by a declaration of service under penalty of perjury stating that the Notice was delivered in person, posted on the door of the main residence at the property to be charged with nuisance, or placed in the U.S. Mail addressed to the occupant of the property to be charged.

(2) Opportunity to Cure.

(a) Upon detection of a Nuisance Flowering Brassica, an aggrieved party seeking abatement must offer the landowner or tenant maintaining the Nuisance Flowering Brassica the estimated fair market value of the Nuisance Flowering Brassica in exchange for abatement (removal) of the Nuisance Flowering Brassica.

(b) If the offer set forth in subsection (a) is not accepted within twenty-four hours and the Nuisance Flowering Brassica abated, the aggrieved party may (i) request that Skagit County bring suit to enjoin and abate the Nuisance Flowering Brassica which Skagit County may pursue in its sole and exclusive prosecutorial discretion; or (ii) may bring suit in the name of the aggrieved party to enjoin and abate the nuisance.

APPENDIX A

Brassica chinensis
B. carinata
B. juncea

B. napus

B. napus var. *napobrassica*
B. nigra

B. oleracea
B. oleracea var. *acephala*

B. oleracea var. *botrytis*
B. oleracea var. *capitata*
B. oleracea var. *gemmifera*
B. oleracea var. *gongylodes*
B. oleracea var. *italica*
B. pekinensis

B. rapa

B. rapa subsp. *trilocularis*
B. tournefortii

Other Crucifer genera and species present in Washington (**bold font** = species sometimes grown commercially in Washington State's Brassica vegetable seed production districts)

Alyssum spp.
Arabidopsis thaliana
Arabis spp.
Armoracia rusticana
Barbarea spp.
Berteroa incana
Cakile spp.
Camelina sativa
Capsella bursa-pastoris
Cardamine spp.
Cheiranthus cheiri
Cochlearia officinalis
Conringia orientalis
Coronopus didymus
Crambe spp.
Descurainia spp.
Draba spp.
Erucastum gallicum
Erysimum spp.
Hesperis matronalis
Iberis spp.
Lepidium spp.

Lesquerella spp.
Lobularia maritima
Lunaria annua

Pak choi
 Ethiopian mustard
 Brown mustard, oriental mustard, Chinese mustard, gai-choi, Indian mustard, kai-tsoi, karashina, leaf mustard, mustard cabbage, mustard greens, ostrich plume, southern cole, Swatow mustard
 Canola, colza, rape, rapeseed, rutabaga, Swede rape, turnip
 Rutabaga, Swede, Swedish turnip
 Black mustard, brown mustard, cadlock, scurvy, senvil, warlock
 Cabbage, kale, kohlrabi, wild cabbage
 Borecole, brashette, cole, colewort, collards, flowering cabbage, kale
 Broccoli, cauliflower
 Cabbage, savoy, savoy cabbage
 Brussels sprouts
 Kohlrabi
 Asparagus broccoli, Italian broccoli, sprouting broccoli
 Celery cabbage, Chinese cabbage, pe-tsai, Shantung cabbage
 Canola, bird's rape, bird's rape mustard, field mustard, turnip
 Field mustard
 African mustard
 Madwort, alyssum
 Mouse-ear cress
 Rock-cress
Horseradish, red-cole
 Winter cress, yellow-rocket
 Hoary alyssum
 Sea-rocket
Camelina
 Shepherd's-purse
 Cress, toothwort, pepperwort, bittercress, shotweed
 English wallflower, wallflower
 Scurvy-grass
 Hare-ear mustard
 Swine-cress
 Colewort, crambe, scurvy-grass, sea kale
 Tansymustard
 Whitlow-grass, draba
 Dogmustard
 Wallflower, cress, mustard
 Dame's-rocket
 Candytuft
 Peppergrass, pepperwort, tongue-grass

Bladderpod
 Sweet alyssum
 Bolbonac, honesty-plant, money-plant, moonwort, penny-flower, silver-dollar

Matthiola spp.
Nasturtium officinale
Parrya nudicaulis
Phoenicautis cheiranthoides
Raphanus raphanistrum
R. sativus
R. sativus cv. 'longipinnatus'
Rorippa spp.
Sibara virginica
Sinapis alba
S. arvensis
Sisymbrium spp.
Smelowskia spp.
Stanleya spp.
Streptanthus spp.
Thelypodium spp.
Thlaspi spp.
Thysanocarpus curvipes

Stock
 Watercress
 Wallflower
 Wallflower, *Phoenicautis*
 Jointed charlock, wild radish
 Radish
 Chinese radish, daikon
 Field cress
 Rock-cress, sibara
 White mustard, yellow mustard
 California rape, charlock, wild mustard
 Mustard, tumble mustard, hedge mustard
 False candytuft
 Prince's plume, desert plume
 Jewelflower
 Tumble mustard, thelypodium
 Pennycress, stinkweed, fan weed, French weed
 Fringe-pod, lace-pod

Skagit County Brassica Ordinance Signature Page

Name	Company	Signature
Kathy Lindbloom	Sakata Seed America	Kathy L.
ROBERT PETERSON	SAKATA SEED AMERICA	R. L. Peterson
Barbara L. Cleave	Sakata Seed America	Barbara L. Cleave
Kola Jackson	Sakata Seed America	Kola Jackson
Shosha Seneviratne	Sakata Seed America	Shosha Seneviratne
Brandon Henning	Sakata Seed America	Brandon Henning
Leticia Rodriguez	Sakata Seed America	Leticia Rodriguez
PAUL KLEIN	RISK ZUCCHINI	Paul Klein
JUDY GRAY	TRIPLE ZUCCHINI	Judy Gray
Michael P. Le	Universal Seed Co	Michael P. Le
Stephen Stand	Wilma USA	Stephen Stand
Tyler Bream	Bream Farms	Tyler Bream
Jesse Calbreath	Lazy J Farm	Jesse Calbreath
Matt Calbreath	Lazy J Farm	Matt Calbreath
Skylar Paulowicz	LAZY J Farm	Skylar Paulowicz
Sean Galbreath	Lazy J Farm	Sean Galbreath
Rae Lee	Lee Farm	Rae Lee
Tom Ovisson	Skagit Valley Farm	Tom Ovisson
William Swanson	Skagit Valley Farm	William Swanson

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Lourdes Shuart

From: Leah Allen <lallen@skagitpublishing.com>
Sent: Wednesday, February 27, 2019 4:00 PM
To: Commissioners
Subject: Brassica ordinance - Skagit Valley Herald

Hi County Commissioners,

This is Leah from the Skagit Valley Herald. I'm working on a story about a Skagit County brassica ordinance brought forward by the Puget Sound Seed Growers and the Western Washington Small Seed Advisory Committee. I'm wondering if that ordinance has made its way to the commissioners, and if so, where is it in the process?

Thank you,

Leah

Leah Allen

Reporter - Skagit Valley Herald

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Open
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Summary
Jus