Skagit County
Planning & Development Services
DALE PERNULA, AICP *Director* **JACK MOORE, CBCO** *Building Official*

Staff Report

From: Dale Pernula, AICP, Director

Re: Proposed Permanent Regulations on Marijuana Facilities

Date: March 24, 2015

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Background

Recreational Marijuana Facilities (I-502)

In November 2012, voters approved Initiative 502, which legalized recreational marijuana in Washington State and directed the Washington State Liquor Control Board ("LCB") to develop regulations for permitting marijuana production, processing, and retail facilities. The LCB filed its rules on October 21, 2013.

In December 2013, the Planning Department issued a memo on marijuana permitting (the "Guidance Memo") on its website that established how the Department would apply existing county code to marijuana facilities. In general, the Guidance Memo considered outdoor marijuana production operations to be "agriculture" under the zoning code, but indoor marijuana production and processing facilities to be industrial uses. Marijuana retail facilities were considered similar to other retail or commercial uses. Each were allowed in the zones that already allowed "agriculture," "industrial," or "retail" uses. In January 2014, Attorney General Bob Ferguson issued a formal opinion confirming that local government has the authority to regulate or prohibit the sale of I-502 marijuana within its jurisdiction.

Medical Marijuana Facilities (Collective Gardens)

Washington State has allowed the limited use of marijuana for medicinal purposes since voters approved Initiative 692 in 1998. In 2011, the Legislature adopted a bill expanding the use of

medical marijuana and allowing the establishment and cultivation of "collective gardens" for growing marijuana for medicinal purposes.[1]

At the time, the U.S. Department of Justice took the position that state and local officials that enabled distribution of medical marijuana could be subject to federal criminal prosecution. Consequently, then-Governor Gregoire vetoed several sections of the bill. The effect of those vetoes was not immediately apparent; most cities and counties believed that the bill legalized medical marijuana and collective gardens, but it left them unregulated by state authorities.

In April 2012, the Board of County Commissioners adopted a complete moratorium on cannabis dispensaries and medical marijuana collective gardens. The moratorium lasted for a year, but then expired without the County taking action to adopt permanent regulations. It was not renewed, and collective gardens were not prohibited from locating in Skagit County, although none applied for permits.

In March 2014, the Division 1 Court of Appeals, in *Cannabis Action Coalition v. City of Kent*, interpreting the effects of then-governor Gregoire's line-item vetoes of portions of the 2011 bill, held that neither medical marijuana nor collective gardens have been legalized under state law. After the decision, the Department modified the Guidance Memo to remove any reference to medical marijuana facilities. Medical marijuana remains obtainable at a few facilities around the county.

The Legislature is expected to amend state law in the next legislative session to harmonize the medical marijuana statute with the recreational statute (I-502) and make other changes to the marijuana statutes to comply with directives from the U.S. Department of Justice.

Current County Regulations (the Interim Ordinance)

On December 15, 2014, in response to public comments and complaints about the locations and impacts of marijuana production and processing operations, the Board adopted an interim ordinance (O20140008) that created a partial moratorium on new recreational marijuana production or processing facilities in the following zones: Rural Intermediate, Rural Reserve, Rural Business, Rural Center, Rural Resource-NRL, Rural Village Commercial, Bayview Ridge Residential, and Hamilton Residential. The ordinance also included a complete moratorium on new medical marijuana collective gardens or dispensaries.[2]

On December 22, 2014, the Board of County Commissioners adopted a new interim ordinance (O20140009) that retained the partial moratorium but modified the other restrictions. On February 17, after a public hearing and considering public comments, the Board of County Commissioners met and directed the Department to draft a revised interim ordinance implementing the recommendations in its February 12 memo, but allowing no hazardous chemical processing in Ag-NRL, and only closed-loop processing systems in the other zones where processing is allowed. The

[1] More precisely, the law provides an affirmative defense to qualifying patients and their designated providers, post-arrest, in state criminal prosecutions for violations of the Uniform Controlled Substances Act. It does not "legalize" medical marijuana, although it may be said to have had that effect. Seattle City Attorney Pete Holmes recently issued a memo, "Moving Marijuana Policy Forward," that clearly articulates this point.

[2] Snohomish County had a similar experience, adopting permanent regulations in November 2013 but then adopting emergency ordinances at the end of September 2014 to prohibit marijuana facilities in their R-5 rural zone.

Board adopted that new interim ordinance on March 3. That ordinance corresponds with this proposal for permanent code changes.

Currently Permitted Facilities

Facilities legally established prior to the date of the ordinance are not affected by the new rules. Under the Guidance Memo (or subsequent interim regulations), the Department has approved two facilities in Ag-NRL by administrative special use permit, with another under review. One facility in the Rural Reserve zone has received a Hearing Examiner special use permit. Four other facilities that do not require special use permits (in Rural Intermediate, Rural Resource-NRL, and two in Natural Resource Industrial) have applied for building permits. Several others may be in operation that did not require permits.

Summary of Proposal

At the Board's direction, the Department has drafted permanent regulations that would do the following:

1. **Prohibit outdoor growing of marijuana countywide.** Outdoor growing is unlikely to be desirable for serious producers, and introduces additional security and odor concerns.
2. **Allow only those marijuana facilities that are licensed by the Liquor Control Board.** Medical marijuana facilities, which are illegal under existing law, are likely to be rolled up into the recreational system during the current legislative session.
3. **Prohibit the use of flammable or combustible liquids or gases for marijuana extraction in Ag-NRL.** Butane and propane extraction processes have potential for explosions. Non-flammable CO_2 systems are available alternatives. Allow only closed-loop processing systems in the other zones where processing is allowed.
4. **Require all marijuana production or processing facilities to employ ventilation systems such that no odors from the production or processing are detectable off the premises.** This has been a frequently cited neighborhood concern, but was not one that the Department could address without new regulation.
5. **Require that any LCB-required security cameras be aimed so as to view only the facility property, not public rights-of-way or neighboring properties.** This has been a frequently cited neighborhood concern.
6. **When required, special use permits must address impacts on surrounding properties,** including but not limited to the appropriate distance of the facility from residences, schools, daycare facilities, public parks, other public facilities, and other marijuana facilities and include appropriate controls on odor; screening or other requirements to avoid lighting impacts; protections against security cameras infringing on neighbors' privacy; controls on hazardous processing methods; and mitigation of other impacts. The Special Use Permit process provides the ability to review projects on a case-by-case basis.

7. **Allow I-502 facilities *only* in the following zones, by type.** Zones not listed would not allow any I-502 facilities. Zones within municipal UGAs where municipalities' development regulations apply (i e., A-UD, MV-UD, and L-UD) would continue to apply the municipalities' regulations.

Zone	*Retail*	*Production/Processing in an **Opaque** Structure*	*Production/Processing in a **Transparent** Structure*
Agricultural—Natural Resource Lands (Ag-NRL)	X	P, only in structures existing as of 1/1/2014	HE, only in structures existing as of 1/1/2014
Bayview Ridge Light Industrial (BR-LI)	X	P	P; HE when within 1000 ft of a residential zone
Bayview Ridge Heavy Industrial (BR-HI)	X	P	P
Hamilton Industrial (H-I)	X	P	P
Natural Resource Industrial (NRI)	X	P	P
Rural Business (RB)	P	X	X
Rural Center (RC)	P	X	X
Rural Freeway Service (RFS)	P	X	X
Rural Resource—Natural Resource Lands (RRc-NRL)	X	P; except prohibited on Guemes Island	AD; except prohibited on Guemes Island
Rural Village Commercial (RVC)	P	AD	X
Urban Reserve Commercial-Industrial (URC-I)	P	P	HE

P = Permitted; AD= Administrative Special Use Permit; HE = Hearing Examiner Special Use Permit; X = Prohibited

Analysis

Based on its experience over the past year and recent public comments and complaints, the Department finds that production/processing facilities are much more likely to have significant impacts on neighboring properties than retail facilities. We also believe that production or processing in *transparent* facilities has larger impacts than that in opaque structures because of nighttime lighting impacts, LCB-required security fencing, and LCB-required security cameras. Because the LCB allows combination production/processing licenses, we propose treating production and processing facilities the same. Otherwise, the Department believes the general direction articulated by the Guidance Memo— that marijuana production and processing should be treated as an industrial operation, not agriculture—is largely sound.

Recommendation

The Department recommends adoption of the proposal. The Board has made clear its desire to establish permanent rules for marijuana regulation as quickly as possible.

Potential Adoption Schedule

The Board of Commissioners desires to adopt permanent regulations before the 60-day deadline expires for another Board public hearing on the new interim ordinance. In its March 3 interim ordinance, the Board directed the Department to release a proposal for permanent regulations no later than March 19, and directed the Planning Commission to hold a public hearing and provide to the Department its recommendation no later than April 21.

The schedule below is consistent with those deadlines.

	Date	*Item*
✓	December 4, 2013	Department issues Guidance Memo
✓	December 15, 2014	Board adopts interim ordinance O20140008
✓	December 22, 2014	Board adopts interim ordinance O20140009
✓	February 17	Board decides path forward
✓	Tuesday, March 3	Board adopts revised interim ordinance
▶	Early March	Department releases proposed code amendments for public comment
	Tuesday, April 7	Planning Commission public hearing at 6 pm
	Thursday, April 9	Written comment period ends
	Tuesday, April 21	Planning Commission deliberates and forwards recommendation
	Tuesday, April 28	Board adopts permanent ordinance and repeals interim ordinance

Consistency

The Department has been careful to consider the purpose of each zone in determining which zones are compatible with the specific types of marijuana facilities.

Process

Public Notices

Skagit County issued a Notice of Availability for this proposal on March 12, 2015.

SEPA Threshold Determination

The Skagit County SEPA Responsible Official has issued a Determination of Non-Significance for this non-project legislative proposal.

Public Comment

The proposal will receive at least one public hearing and written comment period before the Planning Commission, consistent with the process for adoption of land use regulations in SCC Chapter 14.08. The Board of County Commissioners must approve the final adoption.

For More Information

Please visit the project website at www.skagitcounty.net/planning and click on I-502.