

An Ordinance Repealing Ordinance O20150001 and Adopting Permanent Regulations for Marijuana Retail, Production, and Processing Facilities by Amending SCC Chapters 14.04, 14.06, and 14.16

Whereas County residents have expressed concern about the real and potential effects of marijuana facilities on neighboring properties and neighborhoods and the rural character of rural residential zones;

Whereas the State Attorney General has issued a formal opinion (AGO 2014 No. 2) advising that licenses for recreational marijuana production, processing, or retail facilities issued by the State Liquor Control Board do not preempt a county's ability to regulate those uses through zoning;

Whereas changes to state law in the 2015 legislative session (2SSB5052 and 2E2SHB2136) integrated medical marijuana into the recreational marijuana licensing scheme;

Whereas 2E2SHB2136 (2015) Sec. 1001 provides that cities and counties may prohibit medical marijuana cooperatives by zoning;

Whereas federal law, as set forth in 21 USC § 841(a), makes it illegal to manufacture, distribute, or possess with intent to distribute any controlled substance, and pursuant to 21 USC § 812, marijuana is a Schedule I controlled substance;

Whereas pursuant to the Growth Management Act, RCW Chapter 36.70A, the Skagit County Board of Commissioners has adopted the Skagit County Comprehensive Plan and Title 14, the Unified Development Code, for all unincorporated areas of Skagit County;

Whereas a moratorium is a recognized technique to avoid a rush for permits whenever a community decides to change its planning ordinances;

Whereas the Board of County Commissioners ("Board") adopted Ordinance O20140008 on December 15, 2014, creating a moratorium in certain zones and adopting a 250-foot setback in other zones;

Whereas the Board adopted Ordinance O20140009 on December 22, 2014, replacing Ordinance O20140008 with modified rules for locating marijuana facilities;

Whereas the Board held a public hearing on the interim ordinance on January 6, 2015:

Whereas the Board adopted Ordinance O20150001 on March 3, 2015, replacing Ordinance O20140008 and directing Planning and Development Services ("the Department") to prepare a proposal for permanent regulations;

Whereas the Board held a public hearing on the interim ordinance on May 4, 2015:

Whereas the Department released a proposal for permanent regulations on March 12, 2015, and accepted written comment through April 9, 2015:

Whereas the Planning Commission held a public hearing on the proposal on April 7, 2015, and issued a recommendation on May 5, 2015, attached as Attachment 2;

Whereas the Board deliberated on the Planning Commission's recommendations and the Department's recommendations on May 12, 2015, and directed that a new proposal with multiple options be released for additional public comment;

Whereas the Department released that proposal on May 21, 2015, and accepted written comment through June 18, 2015;

Whereas the Board held a public hearing on that proposal on June 16, 2015;

Whereas the Board deliberated on the proposal on July 21, 2015, and directed that the attached ordinance be prepared;

Now Therefore, Be It Ordained by the Board of County Commissioners that:

Section 1. The Board of County Commissioners adopts the following findings of fact:

- A. Marijuana production and processing facilities are incompatible with the rural landscape and rural residential communities, including the Rural Resource zone, which frequently appears near rural residential zones.
- B. Marijuana growing and processing produces potentially significant odors.
- C. The potential impacts of marijuana facilities should be balanced against the likelihood of those impacts, and known impacts should be mitigated through a special use process.
- D. Marijuana retail facilities are compatible with other intense commercial uses but may have some particular effects requiring special mitigation.
- E. Transparent structures and security fencing are likely to have a more significant impact on neighboring residences than opaque buildings due to lighting, odor, aesthetics, and noise.
- F. Transparent structures are harder to secure, provision with odor control technology, and conserve energy.
- G. Marijuana processing involving hazardous chemicals creates a potential explosion hazard, even when conducted in a closed loop system, especially when leaks may not be easily detectable.
- H. Standard setbacks for marijuana facilities that be no larger than the minimum necessary to avoid impacts to neighboring properties.

Section 2. Interim ordinance O20150001 is repealed.

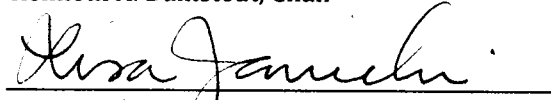
Section 3. Skagit County Code Title 14 is hereby amended as shown in Attachment 1.

Witness Our Hands and the Official Seal of Our Office this 3rd day of August, 2015.

**Board of County Commissioners
Skagit County, Washington**



Kenneth A. Dahlstedt, Chair

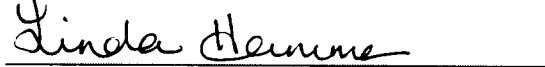


Lisa Janicki, Commissioner



Ron Wesen, Commissioner

ATTEST:



Clerk of the Board

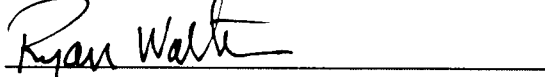
APPROVED AS TO CONTENT:



Dale Pernula, Director

Planning & Development Services

APPROVED AS TO FORM:



Ryan Walters, Civil Deputy

Skagit County Prosecutor's Office

Attachment 1

Plain text = existing code with no changes
~~Strikethrough~~ = existing code to be deleted
Underlined = new code to be added
Italics = instructions to code reviser
[brackets] = optional provisions

SCC Chapter 14.04.020 Definitions

The following definitions are added to SCC 14.04.020:

Marijuana cooperative: consistent with RCW Chapter 69.51A, a shared cooperative for acquiring and supplying the resources needed to produce and process marijuana for the medical use of the members of the cooperative.

Marijuana production facility: any land use involving the growing of marijuana, excluding marijuana cooperatives and marijuana grown at home for medical use consistent with state law.

Marijuana processing facility: any land use involving the processing of marijuana, excluding marijuana cooperatives and marijuana grown at home for medical use consistent with state law.

Marijuana production/processing facility: a marijuana production facility, or a marijuana processing facility, or any combination of the two.

Marijuana retail facility: any land use involving the sale or other provision of marijuana for use or consumption.

SCC 14.06.150 Public notice requirements.

(1) For all public notices that require mailing to property owners and physical addresses, the applicant shall use the records of the Skagit County Assessor's Office for determining all of the owner(s) of record and all physical addresses within ~~300 feet of all subject property lines or as otherwise required~~ the distance specified in Subsection (2)(d)(iii) of this Section. The applicant shall provide the Department with a mailing list including the names and addresses of all applicable property owners and all applicable physical addresses as well as corresponding preaddressed and stamped envelopes, and the Department shall mail the notice. This submittal shall be completed by the applicant within the time frames for notice specified in this Section. The information provided shall be that on record with the Assessor's Office as of no more than 3 months from the date of public notice. Information obtained more than 3 months prior to the date of public notice shall be reviewed for accuracy by the applicant and updated, if necessary, prior to mailing. Failure to submit the required material or perform any necessary review and/or updated could result in continuation of any scheduled hearing or decision. The County shall provide a format, both in time frame and content, for the public notice to the applicant.

(2) Notice of Development Application Requirements.

(a) *No change.*

(b) *No change.*

(c) *No change.*

(d) Notice of Development Application shall be made as follows:

(i) Published in the official newspaper of the County.

(ii) Posted with an identification sign provided by Skagit County in 1 or more locations on the project site that is visible from the access road giving the name and general description of the proposed project and a contact name and phone number for more information. The posted sign may be removed no earlier than 14 days after the decision on the application.

(iii) Mailed to all physical addresses and owners of record located within 300 feet of all subject property lines, or, if the applicant owns property adjacent to the subject property, notice shall be given to all physical addresses and all owners of real property within 300 feet of any portion of the boundaries of such adjacent properties owned by the applicant. Further provided, however, when the Administrative Official finds that a need exists, and so informs the applicant at the preapplication meeting, notice shall be given to all physical addresses and all owners of real property within 500 feet of any portion of the applicable boundaries. For marijuana facilities, notice must be provided within 1,000 feet.

(iv) Sent to all County Departments and agencies with jurisdiction.

(v) For all development permit applications submitted on lands located in the URR, URC-I, URP-OS, A-UD and MV-UD zoning districts not otherwise exempt from these notice requirements, a copy of the Notice of Development Application shall also be mailed to the city in whose UGA the proposed development is located.

(e) *No change.*

(3) - (4) *No change.*

SCC Chapter 14.16 Zoning

The following sections of Chapter 14.16 are revised as follows:

14.16.100 Rural Village Commercial (RVC)

- (1) *No change.*
- (2) *No change.*
- (3) Administrative Special Uses.
 - (a) – (l) *No change.*
 - (m) Marijuana retail facility.
- (4) – (6) *No change.*

14.16.110 Rural Center (RC)

- (1) *No change.*
- (2) *No change.*
- (3) Administrative Special Uses.
 - (a) – (g) *No change.*
 - (h) Marijuana retail facility.
- (4) – (6) *No change.*

14.16.120 Rural Freeway Service (RFS)

- (1) *No change.*
- (2) Permitted Uses.
 - (a) – (n) *No change.*
 - (o) Marijuana retail facility.
- (3) – (6) *No change.*

14.16.175 Hamilton Industrial (H-I).

- (1) *No change.*
- (2) *No change.*
- (3) *No change.*
- (4) Administrative Special Uses.
 - (a) – (i) *No change.*
 - (j) Marijuana production/processing facility.
- (5) – (8) *No change.*

14.16.180 Bayview Ridge Light Industrial (BR-LI).

(1) *No change.*

(2) Permitted Uses.

(a) – (bb) *No change.*

(dd) Marijuana production/processing facility at least 1000 ft from a residential zone.

(3) *No change.*

(4) Administrative Special Uses

(a) – (g) *No change.*

(h) Marijuana production/processing facility within 1000 ft of a residential zone.

(5) – (10) *No change.*

14.16.190 Bayview Ridge Heavy Industrial (BR-HI).

(1) *No change.*

(2) Permitted Uses.

(a) – (bb) *No change.*

(cc) Marijuana production/processing facility.

(3) – (9) *No change.*

14.16.195 Urban Reserve Commercial-Industrial (URC-I).

(1) *No change.*

(2) *No change.*

(3) Administrative Special Uses.

(a) – (j) *No change.*

(k) Marijuana retail facility.

(4) Hearing Examiner Special Uses.

(a) – (e)

(f) Marijuana production/processing facility.

(5) – (8) *No change.*

14.16.400 Agricultural—Natural Resource Lands (Ag-NRL).

(1) *No change.*

(2) *No change.*

(3) Administrative Special Uses.

(a) – (l) *No change.*

(m) Marijuana production/processing facility in a structure existing as of January 1, 2014.

(4) - (7) *No change.*

New section 14.16.855 Marijuana and Marijuana Facilities

(1) When allowed.

(a) Marijuana facilities are allowed only where explicitly identified in this Chapter; except that in municipal UGAs where a municipality's development regulations apply, a marijuana facility must comply with the municipality's development regulations instead of this section.

(b) Marijuana processing using hazardous or flammable solvents or gases is allowed only in BR-HI, only in a marijuana processing facility, and only in a professional-grade closed-loop extraction system that is designed to recover the chemicals and that is labeled for such use by the manufacturer.

(c) Growing medical marijuana at home by individuals, when done consistent with state law, is allowed in all zones.

(d) The following uses and activities are explicitly prohibited in all zones:

(i) Outdoor growing of marijuana.

(ii) Marijuana production or processing in a greenhouse or any translucent structure.

(iii) Marijuana cooperatives and collective gardens.

(iv) Any growing or processing of marijuana or keeping marijuana plants when not in compliance with state law governing the growing of medical marijuana at home or without a current license from the State Liquor and Cannabis Board.

(v) Any storage or growing of plants if any portion of such activity can be readily seen by normal unaided vision or readily smelled from a public place or the private property of another housing unit.

(2) Characterization. Marijuana production and processing is an industrial use, not an agricultural use.

(3) Requirements for all marijuana facilities:

(a) A marijuana production or processing facility must employ ventilation systems such that no odors from the production or processing are detectable off the premises.

(b) A marijuana facility that employs security cameras must aim those cameras so as to view only the facility property, not public rights-of-way or neighboring properties.

(c) The Fire Marshal must notify the local fire district or other fire authority whenever the Department approves a permit for any marijuana production or processing facility.

(4) A special use permit for a marijuana production/processing facility must:

(a) be conditioned on holding a current license from the State Liquor and Cannabis Board;

(b) 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;

(c) include appropriate controls on odor;

(d) include appropriate screening or other requirements to avoid lighting impacts and the visual impacts of security fencing;

(e) include requirements for appropriate disposal of the waste and byproducts of production and processing;

(f) include protections against security cameras infringing on neighbors' privacy;

(g) include any additional controls on hazardous processing methods with potential to injure neighboring properties;

(h) mitigate other impacts.

(5) A special use permit for a marijuana retail facility must:

(a) be conditioned on holding a current license from the State Liquor and Cannabis Board;

(b) include appropriate conditions to avoid customer use of marijuana onsite or in adjacent areas (e.g., security cameras, fences, or site design);

(c) mitigate other impacts.

14.16.900 Special use permit requirements.

(1) *No change.*

(2) Special Uses with Specific Criteria.

(a) – (i) *No change.*

(i) Marijuana production, processing, and retail facilities. See SCC 14.16.855.

(3) *No change.*

Attachment 2

**Skagit County Planning Commission's Recorded Motion Regarding
Permanent Regulations for Marijuana Facilities**

Proposal publish date:	March 12, 2015
Proposal name:	Permanent Regulations for Marijuana Facilities
Documents available at:	http://www.skagitcounty.net/marijuana
Public hearing body:	Skagit County Planning Commission
Public hearing date:	Tuesday, April 7, 2015, at 6 p.m.
Written comment deadline:	Thursday, April 9, 2015, at 4:30 p.m.
PC deliberations:	Tuesday, April 21, and Tuesday, May 5, 2015

After considering the written and spoken comments and considering the record before it, the Planning Commission enters the following findings of fact, reasons for action, and recommendations to the Board of County Commissioners.

Findings of Fact and Reasons for Action

1. Outdoor growing of marijuana creates substantial impacts on neighboring properties as well as other considerations, e.g., required security fences and additional water usage, and should not be allowed.
2. Medical marijuana collective gardens (a) are not actually authorized by state law due to the governor's veto of the required patient registry system, (b) operate free of any state regulation, and (c) will be formally prohibited by new state legislation as of July 2016. Therefore only marijuana facilities licensed by the Liquor Control Board should be allowed in Skagit County, with appropriate exceptions for the new "marijuana cooperatives."
3. Marijuana processing or extraction involving flammable or combustible liquids or gases should not be allowed in areas where the chemicals and explosions may affect neighboring properties.
4. Marijuana growing or processing should not be allowed to produce odors that are detectable off the premises.
5. Although security cameras are a reasonable requirement by the Liquor Control Board to ensure security of marijuana facilities, neighboring properties should not be observed by such cameras.
6. Special use permits are a reasonable way to regulate land uses when the uses are expected to have impacts on neighboring properties because the uses are not uniform or the zone is not developed uniformly, e.g. where many residential uses are present in a non-residential zone.

7. Marijuana production and processing facilities are most similar in their impacts to industrial uses, and should primarily be allowed in zones where other industrial uses are allowed.
8. Marijuana retail facilities are most similar in their impacts to other retail uses and should be allowed in zones where retail uses are allowed.
9. The ordinance should address recent legislation approved by the Legislature and expected to be approved by the Governor allowing medical marijuana to be grown at home by qualifying patients.
10. Marijuana growing requires significant water. The impacts of water use and processing should be addressed.
11. Medical marijuana cooperatives with up to four people and sixty plants are likely to have significant impacts similar to businesses.
12. Transparent structures and security fencing are likely to have a more significant impact on neighboring residences than opaque buildings due to lighting, odor, aesthetics, and noise.
13. Marijuana growing and processing produces potentially significant odors.
14. Marijuana production and processing facilities are incompatible with the rural landscape and rural residential communities.
15. Marijuana processing involving hazardous chemicals creates a potential explosion hazard, even when conducted in a closed loop system, especially when leaks may not be easily detectable.
16. Marijuana production should not be allowed on Guemes Island due to the limited aquifer and possibility of groundwater contamination from fertilizer, pesticides, and waste.

Recommendation

The Planning Commission recommends that the Board of County Commissioners **approve** the proposal with the following changes:

1. The zones where marijuana facilities are allowed should be as follows:

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

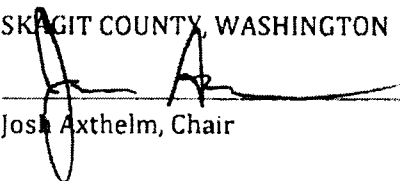
2. Increase the notice radius for special use permits for marijuana facilities to 1000 feet.
3. Prohibit hazardous chemical processing in any zone other than BR-HI.
4. Add a paragraph to SCC 14.16.855 requiring the Fire Marshal to notify the local fire district or other fire authority whenever the Department approves a permit for any Marijuana Production or Processing Facility.
5. Add “appropriate disposal of the waste and byproducts of production and processing” to the list of special use permit considerations.
6. A production or processing facility and any security fencing must be set back at least 400 ft from a residence not owned by the facility operator.
7. Change the definition of Marijuana Production Facility to exclude Marijuana Cooperatives and marijuana grown at home for medical use consistent with state law.
8. Change the definition of Marijuana Processing Facility to exclude Marijuana Cooperatives and marijuana processed at home for medical use consistent with state law.
9. Change the definition of Marijuana Production/Processing Facility to mean any combination of a Marijuana Production Facility and a Marijuana Processing Facility.

10. Create a new definition of Marijuana Cooperative consistent with state law.
11. Rename new section SCC 14.16.855 to "Marijuana and Marijuana Facilities."
12. Add a paragraph to that section allowing the medical growing of marijuana at home when done consistent with state law but prohibiting any hazardous chemical processing anywhere other than a Marijuana Processing Facility and prohibiting medical marijuana cooperatives in all zones.
13. Add a paragraph to that section prohibiting the "growing or processing of marijuana and keeping marijuana plants not in compliance with state law governing the growing of medical marijuana at home."
14. Add a paragraph to that section prohibiting "the storage or growing of plants if any portion of such activity can be readily seen by normal unaided vision or readily smelled from a public place or the private property of another housing unit."

This recorded motion approved May 5, 2015:

Commission Vote	Support	Oppose	Absent	Abstain
Josh Axthelm, Chair	✓			
Keith Greenwood, Vice Chair	✓			
Amy Hughes	✓			
Annie Lohman	✓			
Matt Mahaffie			✓	
Kathy Mitchell	✓			
Kevin Meenaghan			✓	
Tammy Candler	✓			
Robert Temples			✓	
Total	6	0	3	0

SKAGIT COUNTY PLANNING COMMISSION
SKAGIT COUNTY, WASHINGTON



Josh Axthelm, Chair

5/5/15
Date



Dale Pernula, Secretary

5/5/15
Date