

**BOARD OF COUNTY COMMISSIONERS
COUNTY OF COWLITZ, STATE OF WASHINGTON**

ORDINANCE NO. 14 067

**Repealing Chapter 18.01 interim regulations and adopting Chapter 18.76
“Recreational Marijuana” of the Cowlitz County Code establishing permanent
official controls on the production, processing and retailing of recreational marijuana**

WHEREAS, pursuant to Article 11, Section 11 Washington State Constitution and RCW 36.70.010 & -.750, RCW 36.32.120, RCW 69.51A.140, and other lawful authority the Board of Cowlitz County Commissioners, the Board has the authority to enact zoning controls and development regulations pertaining to the production, processing, or dispensing of cannabis or cannabis products within its jurisdiction; and

WHEREAS, pursuant to said laws and authority, the Board adopted Ordinance No. 13-154 by emergency enactment, and Ordinance 14-016 and Chapter 18.01 of the County Code establishing interim land use controls on recreational marijuana production, processing and retail sales; and

WHEREAS, pursuant to such laws and interim enactment, the Board establishing a working group to develop permanent controls to present to the Planning Commission to consider extending, amending or rescinding these interim land use controls; and

WHEREAS, the Planning Commission reviewed and considered the working group work product and has recommended adoption of permanent land use controls on recreational marijuana production, processing and retail sales;

**NOW THEREFORE BE IT ORDAINED BY THE BOARD OF COUNTY
COMMISSIONERS OF COWLITZ COUNTY AS FOLLOWS:**

Section 1. General Findings.

1. The purpose of this ordinance is to establish zoning regulations related to the siting of marijuana businesses allowed under Initiative 502 in unincorporated Cowlitz County.
2. Initiative 502 was passed by the voters of the State of Washington in November 2012, providing a framework under which marijuana producers, processors, and retailers can become licensed by the Washington State Liquor Control Board.
3. The SEPA Responsible Official issued a threshold decision for these proposed permanent regulations on July 2, 2014 and comments were accepted through July 16, 2014.
4. On June 25, 2014, the Cowlitz County Planning Commission held a workshop and public hearing on the proposed permanent regulations and on July 11, 2014, transmitted the Commission's adopted findings on and recommendation of adoption of permanent regulations.
5. Marijuana remains illegal under the federal Controlled Substances Act, 21 U.S.C. §801 et seq. State and local regulations do not preempt federal law. Individuals and businesses involved in the production, processing, sales, and possession of marijuana could still be subject to prosecution under federal law. Local zoning and other regulations are not

associated with and are not a defense against a violation of federal law, and are not associated with and are not a defense against violation of state law or administrative licensing of recreational marijuana.

- 6. While marijuana is still classified as a controlled substance under state law in RCW 69.50.204(c)(22), the adoption of Initiative 502 allows it to be produced, processed and sold under the strict licensing program established by the Washington State Liquor Control Board. Recognizing that the State is proceeding with licensing and regulation of the production, processing and retail of marijuana, the Board believes it necessary to adopt permanent local regulations for these facilities to further protect the public health, safety and welfare of its citizens. Cowlitz County makes no representations or commitments about the lawfulness of the facilities and leaves all issues relating to the legality and licensing of such facilities to be determined by the federal and state governments in the exercise of their lawful authority, as finally determined by a court of appropriate jurisdiction.
- 7. This ordinance provides reasonable regulations to address compatibility of uses, screening, safety standards and other requirements consistent with the County's desire to provide efficient and effective development and reduce conflicts with other uses.
- 8. Nothing in this ordinance is intended nor shall be construed to authorize or approve medical marijuana collective gardening or medical marijuana cooperatives.
- 9. Nothing in this ordinance is intended nor shall be construed to authorize or approve of any violation of federal or state law.

Section 2. Repeal and Adoption.

Ordinance Nos. 13-154 and 14-016, and the official interim controls of Chapter 18.01 of the Cowlitz County Code, entitled "Recreational Marijuana" are hereby repealed, and a new Chapter 18.76, entitled "Recreational Marijuana", attached hereto as "Exhibit A" and incorporated herein by this reference, is hereby adopted in its entirety.

Section 3. Codification.

Only the Code amendments in Chapter 18.76 and its sections 18.76.010 through and including 18.76.090, as set forth in "Exhibit A" attached hereto, shall be codified from this Ordinance and that Chapter 18.01 shall be repealed and redacted from the Code.

Section 4. Savings Clause.

Such repeals and amendments shall not be construed as affecting any existing right acquired under the ordinances or portions of ordinances repealed or amended, nor as affecting any proceeding instituted thereunder, nor any rule, regulation, or order promulgated thereunder, nor the administrative action taken thereunder. Notwithstanding the foregoing actions, obligations under such ordinances or permits issued thereunder and in effect on the effective date of this ordinance shall continue in full force and effect, and no liability thereunder, civil or criminal, shall be in any way modified. Further, it is not the intention of these actions to reenact any ordinance or portions or sections of ordinances previously repeal or amended, unless this ordinance specifically states such intent to reenact such repealed or amended ordinances.

Section 5. Severability.

The provisions of this ordinance are declared separate and severable. If any section, paragraph, clause, or phrase of this ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The Board of Commissioners hereby declares that it would have passed this ordinance and each section, paragraph subsection, clause or phrase thereof irrespective of the fact that any one or more sections, paragraph subsections, clauses or phrases may subsequently be found to be unconstitutional or invalid.

Section 6. Effective Date.

These regulations are in the public interest and shall take effect immediately upon adoption by the Board of County Commissioners.

APPROVED THIS 29th day of July, 2014, after public hearing pursuant to Notice published in The Daily News.

APPROVED THIS 29th DAY OF July 2014

ATTEST:

BOARD OF COUNTY COMMISSIONERS
OF COWLITZ COUNTY, WASHINGTON

Tiffany Ostreim
Tiffany Ostreim, Clerk of Board

Michael A. Karnofski
Michael A. Karnofski, Chairman



James R. Misner
James R. Misner, Commissioner

Dennis P. Weber
Dennis P. Weber, Commissioner

APPROVED AS TO FORM, ONLY:
Sue I. Baur, Prosecuting Attorney

Douglas E. Jensen
Douglas E. Jensen, Chf. Civil Deputy

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**Chapter 18.76
Recreational Marijuana**

Sections:

- 18.76.010 Title.
- 18.76.020 Purpose.
- 18.76.030 Definitions.
- 18.76.040 Applicability.
- 18.76.050 Authority and administration.
- 18.76.060 Location of Recreational Marijuana Facilities.
- 18.76.070 Development Standards
- 18.76.080 Review Process and Administration
- 18.76.090 Violations - Penalties
- 18.76.100 Severability
- 18.76.110 Effective date

18.76.010 Title.

The ordinance codified in this chapter shall be known as the "Cowlitz County Recreational Marijuana Code."

18.76.020 Purpose.

- A. To acknowledge the passage and enactment of Initiative 502 and associated licensing procedures for recreational marijuana by the state of Washington by developing local review standards for the placement and development of recreational marijuana uses.
- B. Minimize potential adverse impacts to the citizens of Cowlitz County by developing land use regulations regarding the location and development standards for recreational marijuana land uses.
- C. Provide a consistent and predictable path for the development of recreational marijuana land uses and encourage their placement in areas where adverse impacts can be minimized.
- D. Nothing in this ordinance shall be construed to supersede Washington state law prohibiting the acquisition, possession, manufacture, sale, or use of marijuana in any manner not authorized by Chapter 69.51A RCW, or Chapter 69.50 RCW.

18.76.030 Definitions.

For the purposes of this chapter the following terms are defined:

Agriculture Area(s) means those area zoned by the Cowlitz County Land Use Ordinance as Agriculture, Agriculture-38, and Agriculture-Industrial. The term "Agriculture Areas" also includes areas classified by the Comprehensive Plan as Agriculture and Agriculture-Industrial. In the event of a conflict between

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the Land Use Ordinance and the Comprehensive Plan, the zoning designation shall prevail.

Day means days that the office of the Director is open for business, unless otherwise specified.

Director means the Director of Building and Planning Department, or his/her designee.

Industrial Area(s) means those area zoned by the Cowlitz County Land Use Ordinance as Heavy Manufacturing and Light Manufacturing. The term "Industrial Areas" also includes areas classified by the Comprehensive Plan as Heavy Industrial and Light Industrial. In the event of a conflict between the Land Use Ordinance and the Comprehensive Plan, the zoning designation shall prevail.

Marijuana means all parts of the plant cannabis, whether growing or not, with a THC concentration greater than 0.3 percent on a dry weight basis; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. The term does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

Marijuana Infused Products means products that contain marijuana or marijuana extracts and are intended for human use. The term "marijuana-infused products" does not include usable marijuana.

Marijuana Paraphernalia does not include drug paraphernalia, as defined in RCW 69.50.102, for introducing into the human body any controlled substance, as defined in RCW 69.50.101, other than marijuana.

Marijuana Processor means a person or facility licensed by the state liquor control board to process marijuana into useable marijuana and marijuana-infused products, package and label useable marijuana and marijuana-infused products for sale in retail outlets, and sell useable marijuana and marijuana-infused products at wholesale to marijuana retailers. All marijuana processors are classified as either a Type 1 or a Type 2 processor (see below).

Marijuana Processor, Type 1 means a marijuana processor that is limited to drying, curing, trimming, and packaging marijuana.

Marijuana Processor, Type 2 means a marijuana processor that extracts concentrates, infuses products, or involves mechanical and/or chemical processing in addition to drying, curing, trimming, and packaging.

Marijuana Producer means a person or facility licensed by the state liquor control board to produce and sell marijuana at wholesale to marijuana processors and other marijuana producers. All marijuana producers are licensed by the Washington State Liquor Control Board as a Tier 1, Tier 2, or Tier 3 producer as identified by WAC 314-55.

Marijuana Retailer means a person licensed by the state liquor control board to sell useable marijuana and marijuana-infused products in a retail outlet.

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Recreational Marijuana Facility is a general term which includes marijuana retailer, Marijuana Processor, and/or Marijuana Producer. A recreational marijuana facility includes the structure(s) in which the recreational marijuana land use operates, as well as the associated parking lot area.

Remote Areas means those area zoned by the Cowlitz County Land Use Ordinance as Forestry Recreation. The term "Remote Areas" also includes areas classified by the Comprehensive Plan as Forestry-Open Space. In the event of a conflict between the Land Use Ordinance and the Comprehensive Plan, the zoning designation shall prevail.

Retail Outlet means a location licensed by the state liquor control board for the retail sale of useable marijuana and marijuana-infused products.

Rural means those area zoned by the Cowlitz County Land Use Ordinance as Rural Residential -1, -2, and -5. The term "Rural Areas" also includes areas classified by the Comprehensive Plan as Rural Residential-1, -2, and -5. In the event of a conflict between the Land Use Ordinance and the Comprehensive Plan, the zoning designation shall prevail.

Setback generally means the required distance from any structural part of a recreational marijuana facility to either a property line and/or to a neighboring residence. Specific measurement criteria are typically identified along with specific setback requirements.

Structure means that which is built or constructed, an edifice or building of any kind or any works erected, built up or composed of parts joined together in some definite manner.

THC Concentration means the percent of delta-9 tetrahydrocannabinol content per dry weight of any part of the plant cannabis, or per volume or weight of marijuana product product, or the combined percent of delta-9 tetrahydrocannabinol and tetrahydrocannabinolic acid in any part of the plant Cannabis regardless of moisture content.

Urban means those areas zoned by the Cowlitz County Land Use Ordinance as Urban Residential, Suburban Residential, Multiple Family, Neighborhood Commercial and Urban Commercial. The term "Urban Areas" also includes areas classified by the Comprehensive Plan as Urban Residential (High and Low Density), Suburban Residential, and Commercial. In the event of a conflict between the Land Use Ordinance and the Comprehensive Plan, the zoning designation shall prevail.

Usable Marijuana means dried marijuana flowers. The term "useable marijuana" does not include marijuana-infused products.

18.76.040 Applicability.

1. This ordinance shall apply to all unincorporated areas of Cowlitz County.
2. The requirements of this chapter shall apply to all recreational marijuana related land uses, including the production, processing, and retail sales of marijuana, and marijuana infused products and the expansion and/or alteration of any existing recreational marijuana related facilities.

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3. No use that constitutes or purports to be a marijuana producer, marijuana processor, marijuana retailer, or any medical marijuana facility that was engaged in that activity prior to the enactment of this chapter shall be deemed to have been a legally established and that use shall not be entitled to claim legal nonconforming status.

18.76.050 Authority and administration.

All applications under this chapter shall be made to the Cowlitz County Building and Planning Department. The Director or his/her designee shall administer, interpret, and enforce the provisions of this chapter and shall provide such forms and establish such procedures as may be necessary to administer this chapter.

18.76.060 Location of Recreational Marijuana Facilities

- A. This section identifies the location requirements and required review process for recreational marijuana land uses.

Production					
	<u>Urban</u>	<u>Rural</u>	<u>Industrial</u>	<u>Agriculture</u>	<u>Remote</u>
<u>Tier 1</u>	A	A	A	A	A
<u>Tier 2</u>	S	S	A	S	S
<u>Tier 3</u>	S	S	A	N	N

Processing					
	<u>Urban</u>	<u>Rural</u>	<u>Industrial</u>	<u>Agriculture</u>	<u>Remote</u>
<u>Type 1</u>	A	A	A	S	A
<u>Type 2</u>	S	S	A	N	N

Retail					
	<u>Urban</u>	<u>Rural</u>	<u>Industrial</u>	<u>Agriculture</u>	<u>Remote</u>
<u>Retail Store</u>	A	S	A	N	N

Matrix Key:
A: Administrative review, see section 18.76.080(B)(1)
S: Special Use Review; see section 18.76.080(B)(2)
N: Not allowed

- B. Should any recreational marijuana facility conduct operations in more than one location, individual recreational marijuana approvals for each location

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shall be required. Each location shall follow the appropriate process and meet the appropriate development standards for that particular location.

- C. All marijuana related land uses are subject to the land use provisions of the Cowlitz County Land Use Ordinance, Chapter 18.10, and nothing in this ordinance is intended to supersede those regulations. For those recreational marijuana land uses that do not meet the use requirements for a particular zoning designation, a special use permit shall be required following the process prescribed in CCC 18.76.080(B)(2).

18.76.070 Development Standards

Unless otherwise exempted in this chapter, the standards set forth below shall apply to all recreational marijuana facilities in the unincorporated areas of Cowlitz County. In the event of conflicts with this chapter and any other development standards contained in local ordinance, state law or federal law, the more stringent provision shall apply.

- A. **Building and Fire Codes.** All recreational marijuana facilities and associated structures and development shall conform to the appropriate section(s) of the IBC and IFC.
- B. **Outdoor Production Prohibited.** All recreational marijuana production operations shall be conducted indoors only, in a fully enclosed building or structure. Greenhouses may be considered a fully enclosed building, provided they are an opaque structure and are adequately screened from view of public rights of way and neighboring properties. Screening necessary to meet this standard may be required in addition to the screening standards identified in CCC 18.76.790(E).
- B. **Setbacks.** In addition to those setbacks required by the Cowlitz County Land Use Ordinance and Building Code Ordinance, all recreational marijuana land uses shall maintain the following setbacks.
1. Recreational marijuana land uses located in Urban or Industrial areas shall maintain a minimum setback of 250 feet from any residence, mobile home park, or RV park located on another property. This distance shall be measured as the shortest straight line distance from the exterior wall of any structure associated with the recreational marijuana facility, or exterior boundary of the associated parking lot, to the property line on which the residence, mobile home park, or RV park is located.
 2. For those recreational marijuana land uses within a Rural, Remote, or Agricultural area, the minimum setback is 75 feet, as measured from the exterior wall of any structure associated with the recreational marijuana facility, or exterior boundary of the associated parking lot to exterior wall of any residence located on another property.
- C. **Lighting.** Any lighting proposed with a recreational marijuana facility shall be hooded and/or shielded to prevent light transmission to neighboring properties.

- E. Screening.** The visual impacts of a recreational marijuana facility shall be mitigated through vegetative screening and/or landscaping.
1. A row of evergreen trees or shrubs shall be planted along the outside perimeter of the facility. The vegetation shall be no less than four feet in height when planted, and spaced in such a way as to obscure the facility from view. Any screening shall be maintained in good health and repair at all times.
 2. Subject to approval by the Director, any combination of existing vegetation, berming, topography, decorative walls or fences, or other features instead of landscaping may be permitted if they achieve the same degree of screening as the required landscaping.
 3. Screenings for recreational marijuana retail facilities may be reduced in order to maintain visibility from a public road or right-of-way.
- F. Parking.** All recreational marijuana facilities shall provide adequate parking in accordance with the requirements identified in CCC 18.10.560-.562.
- G. Access.** Demonstration of legal access connecting the recreational marijuana facility and the public right-of-way shall be required at the time of application.
- H. Parcel Size.** All recreational marijuana production and processing facilities shall maintain a minimum lot size based on their location:
1. Facilities located in Rural, Remote, or Agricultural areas shall maintain a minimum legal lot size of 5 acres.
 2. Facilities located within Industrial area Urban areas shall maintain a minimum legal lot size of 1-acre.
 3. Tier 1 production facilities and tier 1 processing facilities operated in only conjunction with a Tier 1 production facility on the same parcel, are not subject to the minimum lot sizes identified above.
- I. Cameras.** Any security cameras proposed with a recreational marijuana facility shall be positioned so as not to intrude on the privacy of adjacent properties.
- J. Zoning Compliance.** In zoned areas, all recreational marijuana related land uses shall meet the requirements of the designation in which they are located. For those recreational marijuana land uses that do not meet the use requirements in a particular zoning designation, a special use permit shall be required following the process prescribed in CCC 18.76.080(B)(2) and CCC 18.10.290-295.
- M. Odor.** No odor or smoke shall be emitted that is detectable at or beyond the walls of the facility, in such a concentration or of such duration as to cause a public nuisance, or threaten health or safety, or to unreasonably infringe upon the use and enjoyment of neighboring uses. Adequate ventilation shall be provided for all facilities to eliminate odors of marijuana detectable outside of the facility.

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- N. Retail Separation. Marijuana retailers shall be separated by a minimum of 300 feet from other marijuana retailers. This distance shall be measured as the shortest straight line distance from property line to property line.
 - K. Variances. The development standards of this chapter may be reduced, increased, altered, or amended subject to approval of a variance in accordance with the procedures set forth in the CCC 18.10.340 through CCC 18.10.365, or as amended.

18.76.080 Review Process and Administration

All recreational marijuana facilities shall be reviewed for consistency with this chapter. Applications shall, at a minimum, contain the application materials identified below.

A. Application Content for all facilities:

1. Master application and parcel description, including assessor's map and parcel number.
2. Scaled site plan identifying all elements of the proposed facility, proposed means of access, and setbacks to all structures and significant features within 300 feet.
3. Vicinity map.
4. Narrative describing all elements of the proposed recreational marijuana land use, and methods to be used to meet the development standards identified within this ordinance.
5. Landscaping/screening plan showing the type, location, and extent of screening or landscaping associated with the facility. This plan shall also identify the methods to be used to maintain the necessary screening. Portions of this requirement may be identified on the scaled site plan required above.
6. Any additional applicable information the Director deems necessary to adequately review the proposal.

B. Review Process. Upon receipt of a complete application for a recreational marijuana facility, the application will be processed following one of the two procedures described below, as determined by section 18.76.060.

1. Administrative Approval. Those Recreational Marijuana Facilities to be approved administratively by the Director shall follow the following process:
 - a. Within 30 days of the receipt of a complete application, the Director shall distribute copies of the application to agencies with jurisdiction for their review. The return date for the agency findings and recommendations shall be set at 10 days after the date of reviewing agency receipt of the review copies.
 - b. The Director shall ensure that all provisions of this chapter have been complied with, and that all findings and recommendations from the reviewing agencies with jurisdiction have been adequately addressed.

- c. The Director may affix such conditions as necessary to ensure compliance with the requirements of this chapter and the findings and recommendations of reviewing agencies with jurisdiction. Any party aggrieved by the decision of the Department, with standing as provided by 36.70C RCW, may appeal such decision pursuant to chapter 18.10.310 CCC
2. Hearings Examiner Approval. Those recreational marijuana facilities requiring special use approval shall be heard in an open record public hearing by the Cowlitz County hearings examiner for compliance with the requirements and standards of this chapter and any other applicable regulations.
- a. Upon receipt of an application for a recreational marijuana facility, the Director shall review it for completeness and conformance with the requirements and standards of this chapter and the goals and objectives of the comprehensive plan.
- b. Upon a determination of a complete application, the Director shall distribute copies of the application to all other agencies with jurisdiction for a period of no less than 10 days.
- c. The Director shall generate a report of findings to be attached to the application, and upon completion of the Director's review, a copy of the application, together with the report and any conditions of approval shall be forwarded to the Cowlitz County Hearings Examiner, and a date shall be set for an open record public hearing to consider the application. The County shall provide notice of such hearing pursuant to CCC 18.10.480.
- d. The hearing examiner may condition such recreational marijuana facility approval as necessary to comply with the requirements of this chapter, the county comprehensive plan, development regulations, and environmental regulations. Conditions applied through this process may exceed the minimum requirements as outlined in this chapter.
- e. The hearing examiner shall issue a decision which shall be final for County purposes. Any party aggrieved by the decision of the hearing examiner, with standing as provided by 36.70C RCW, may appeal such decision pursuant to chapter 18.10.310 CCC.

18.76.090 Violations - Penalties

It is a civil infraction for any person to violate this chapter or assist in the violation of this chapter. Violations are subject to the provisions of Chapter 2.06 CCC. Any violation is a public nuisance. Each day a violation exists is a separate violation. Payment of any penalty imposed for a violation does not relieve a person from the duty to comply with this chapter. Violations of this chapter are also subject to penalties under CCC 1.01.090.