

ORDINANCE NO. ____-2013

Adding new Chapter 17.465 “Marijuana Regulations” to Kitsap County Code for the adoption of restrictions on the production, processing and retailing of recreational marijuana to comply with the passage of Washington Initiative 502

BE IT ORDAINED:

Section 1. General Findings. The Kitsap County Board of Commissioners makes the following 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 Kitsap 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 Washington State Liquor Control Board plans to begin accepting license applications for marijuana production, processing, and retailing in November 2013.
4. Kitsap County wishes to reduce the risk of confusion and code enforcement issues by adopting zoning regulations that provide clarity on where marijuana businesses may locate in unincorporated Kitsap County before businesses apply for state licenses in locations where such businesses might not be permitted.
5. The adoption of land use and zoning is a valid exercise of the County’s police power and is specifically authorized by RCW 36.70.010 and 36.70.750.

Section 2. General Procedural Findings. The Kitsap County Board of Commissioners makes the following findings regarding process and public participation:

1. On September 24, 2013, the County issued to the Washington State Department of Commerce its Notice of Intent to Adopt in accordance with RCW 36.70A.106. On October 17, 2013, the Department of Commerce granted expedited review.
2. The SEPA Responsible Official issued a threshold decision for this draft ordinance on October 4, 2013 and comments were accepted through October 17, 2013. No administrative appeals are allowed for this ordinance, a non-project legislative action, under KCC 21.04.290(E)(2). On December 7, 2013, The SEPA Responsible Official issued a Modified Determination of Non-Significance.
3. On October 17, 2013, the Kitsap County Planning Commission held a public hearing after proper notice, and considered public comment and the entire record related to this ordinance.

4. On October 17, 2013, the Kitsap County Planning Commission adopted Findings of Fact recommending by a vote of 7 to 0 approval of recreational marijuana production and processing in the urban Industrial zone and recreational marijuana retail in the urban Highway / Tourist Commercial zone, each as presented and described within this ordinance. The Planning Commission also noted in their findings that they strongly recommend other commercial zones to 'promote a more equitable spread of potential sites.'
5. On November 25, 2013, the Kitsap County Commissioners held a public hearing after proper notice, and considered public comment and the entire record related to this ordinance. The hearing was continued until December 9, 2013.
6. On December 4, 2013, the Kitsap County Commissioners held a workstudy session, properly noticed, to be briefed on alternatives prepared by the Department of Community Development, which were based on testimony received at the November 25, 2013 public hearing and written comments received on or before December 2, 2013.
7. On December 9, 2013, the Kitsap County Commissioners held the continued public hearing to deliberate and provide a final decision. The Kitsap County Commissioners provided opportunity for limited testimony to consider additional zones that were presented for implementation of I 502.

Section 3. General Substantive Findings. The Kitsap County Board of Commissioners makes the following findings regarding the adoption of chapter 17.465 KCC:

1. Marijuana is illegal under the federal Controlled Substances Act, 21 U.S.C. §§801 et seq. State and local regulations do not preempt federal law. People 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 a defense against a violation of federal law.
2. 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 will soon be issuing licenses for the production, processing and retail of marijuana, Kitsap County believes it necessary to adopt local regulations for these facilities to further protect the public health, safety and welfare of its citizens. Kitsap 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.

3. 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.
4. This ordinance satisfies the procedural and substantive requirements of and is consistent with GMA.
5. This ordinance is consistent with the Kitsap County Comprehensive Plan.
6. Nothing in this ordinance is intended nor shall be construed to authorize or approve medical marijuana collective gardening or medical marijuana cooperatives.
7. Nothing in this ordinance is intended nor shall be construed to authorize or approve of any violation of federal or state law.

Section 4. Kitsap County Code section 17.100.040, "Allowed uses," last amended by Ordinance 415-2008, is amended as follows:

17.100.040 Allowed uses.

Except as provided in Chapter 17.465 KCC, when a use is not specifically listed in this title, it shall be understood that the use may be allowed if it is determined by the director that the use is similar to other uses listed. It is further recognized that every conceivable use cannot be identified. In anticipation that new uses will evolve over time, this section establishes the director's authority to compare a proposed use and measure it against those listed in this title for determining similarity. In determining similarity, as well as when considering all other uses, the director shall make all of the following findings:

- A. The proposed use shall meet the intent of, and be consistent with the goals, objectives and policies of the Kitsap County Comprehensive Plan;
- B. The proposed use shall meet the stated purpose and general intent of the Comprehensive Plan land use designations and zoning classification in which the use is proposed to be located;
- C. The proposed use shall not adversely impact the public health, safety and general welfare of the residents of the county; and
- D. The proposed use shall share characteristics in common with, and not be of greater intensity, density or generate more environmental impact than, those uses listed in the land use zone in which it is to be located.

If determined similar, the unspecified use shall meet all of the code requirements and follow the approval process prescribed for the listed use.

NEW SECTION. Section 5. A new Chapter KCC 17.465, “Marijuana Regulations,” is added to Title 17 KCC as follows:

Chapter 17.465
Marijuana Regulations

Sections:

17.465.010	Findings and Application
17.465.020	Definitions
17.465.030	Location
17.465.040	Permits
17.465.050	Public Nuisance
17.465.060	Nonconforming use

17.465.010 Findings and Application

A. Marijuana is illegal under federal Controlled Substances Act, 21 U.S.C. §§801 et seq. State and local regulations do not preempt federal law. People 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 a defense against a violation of federal law.

B. This chapter is necessary to protect the public health, safety and welfare of Kitsap County citizens. Nothing in this chapter shall be construed as an authorization to circumvent or violate state or federal law, as permission to any person or entity to violate federal law, or to supersede any legislation prohibiting the uses subject to this chapter.

C. This chapter shall apply to those marijuana producers, processors and retailers that are licensed by the Washington State Liquor Control Board under chapter 314-55 WAC.

17.465.020 Definitions

For purposes of this chapter, the following definitions shall apply. Where these definitions conflict with RCW 69.50.101, as now or hereafter amended, those in state law shall govern.

A. Marijuana. “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.

B. Marijuana processor. "Marijuana processor" means a person 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.

C. Marijuana producer. "Marijuana producer" means a person licensed by the state liquor control board to produce and sell marijuana at wholesale to marijuana processors and other marijuana producers.

D. Marijuana-infused products. "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 useable marijuana.

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

F. Useable marijuana. "Useable marijuana" means dried marijuana flowers; it does not include marijuana-infused products.

17.465.030 Location

A. Marijuana Producers

Subject to the requirements of this chapter, marijuana producers may be located as follows. Further, such facilities and uses may only be located at designated sites licensed by the state of Washington and fully conforming to state law and chapter 17.465 KCC.

1. Tier 1, 2, and 3 marijuana producers may be located in the urban Industrial (IND), Rural Employment Center (REC), and 12 Trees Employment Center (TEC) zones.
2. Tier 1 and 2 marijuana producers may be located in the Business Park (BP) zone.
3. Tier 2 and 3 marijuana producers may be located in the Business Center (BC) zone.
4. Tier 1 and 2 marijuana producers may be located in the Rural Industrial (RI) zone.

B. Marijuana Processors

Subject to the requirements of this chapter, marijuana processors may be located in the Business Center (BC), Business Park (BP), urban Industrial (IND), Rural Employment Center (REC), and 12 Trees Employment Center (TEC) zones. Further, such facilities and uses may only be located at designated sites licensed by the state of Washington and fully conforming to state law and chapter 17.465 KCC.

C. Marijuana Retailers

Subject to the requirements of this chapter, marijuana retailers may be located as follows. Further, such facilities and uses may only be located at designated sites licensed by the state of Washington and fully conforming to state law and chapter 17.465 KCC.

1. Marijuana retailers may be located in the Highway / Tourist Commercial (HTC), Regional Commercial (RC), and Rural Employment Center (REC) zones.
2. Subject to securing an Administrative Conditional Use Permit (ACUP), marijuana retailers may be located in the Mixed Use (MU) zone.

D. Marijuana Producers, Processors and Retailers

All marijuana producers, processors and retailers must be a minimum of 1,000 feet away, as measured by the shortest straight line between property boundaries, from any elementary or secondary school, playground, recreation center or facility, child care center, public park, public transit center, library or game arcade as defined in WAC 314-55-010.

17.465.040 Permits.

A. Kitsap County makes no representations as to the legality of the use subject to this chapter. All applicable permits (e.g., administrative conditional use permits, building permits or tenant improvement permits) shall be required.

B. Only state-licensed marijuana producers, processors and retailers may locate within unincorporated Kitsap County. Upon request, all producers, processors and retailers must supply a copy of the state-issued license.

C. No permit shall be approved unless the applicant demonstrates full compliance with chapter 69.50 RCW and Chapter 314-55 WAC.

17.465.050 Public Nuisance.

Any violation of this chapter is declared to be a public nuisance *per se*, and, in addition to any other remedy provided by law or equity, may be abated by the County under the applicable provisions of this code or state law.

17.465.060 Nonconforming Uses.

No use that constitutes or purports to be a marijuana producer, processor or retailer as those terms are defined in this ordinance that was engaged in that activity prior to the enactment of this ordinance shall be deemed to have been a legally established use under Kitsap County Code and that use shall not be entitled to claim legal non conforming status.

Section 6. **Typographical/Clerical Errors.** Should any amendment made to this Ordinance that was passed by the Board during its deliberations be inadvertently left out of the final printed version of the plan, maps, or code, the explicit action of the Board as discussed and passed shall prevail upon subsequent review and verification by the Board, and shall be corrected.

Section 7. **Severability.** If any provision of this Ordinance or its application to any person, entity or circumstance is for any reason held invalid, the remainder of the Ordinance, or the application of the provision to other persons, entities or circumstances is not affected.

Section 8. **Effective Date.** This Ordinance shall take effect immediately.

Dated this ____ day of _____, 2013

BOARD OF COUNTY COMMISSIONERS
KITSAP COUNTY, WASHINGTON

ATTEST:

JOSH BROWN, Chair

CHARLOTTE GARRIDO, Commissioner

Dana Daniels, Clerk of the Board

ROBERT GELDER, Commissioner

Approved as to form by the Kitsap County Prosecutor's Office