

LEWIS COUNTY

— est. 1845 —

# **A Report on Planning Commission Criteria for Developing Land Use Regulations for Marijuana Producers, Processors, and Retailers**

## **September 2014**

**Prepared for**

**The Lewis County Planning Commission and Department of Community Development**

**By John Kliem**

 CREATIVE COMMUNITY SOLUTIONS, INC.

The purpose of this report is to provide the Lewis County Planning Commissioners with several options for their consideration regarding land use regulations pertaining to the production, processing, and retailing of recreational marijuana in Lewis County.

## **Background**

Initiative 502 legalized the production, processing, and retailing of marijuana for recreational use in the State of Washington in November 2012. Chapter 314-55 of the Washington Administrative Code (WAC) provides regulations for the licensing and operation of establishments that grow, process, or sell recreational marijuana. These regulations, however, do not provide specific guidance on how local jurisdictions regulate these establishments through their development policies and regulations.

Lewis County has passed three laws to date governing recreational marijuana production, processing, and retailing. One ordinance adopted requirements for licensing recreational marijuana establishments and the second and third ordinances placed a moratorium on their location within the county. That moratorium is due to expire in December 2014.

## **Planning Commission Recreational Marijuana Land Use Criteria**

County Department of Community Development staff approached the Lewis County Planning Commission at their July 8, 2014 meeting about the possibility of developing a recommendation for the Board of Commissioners' consideration regarding potential land use regulations relating to the production, processing, and retailing of recreational marijuana. At this meeting, the Lewis County Planning Commission heard a presentation on the provisions of Initiative 502, the licensing and operational requirements established by the Liquor Control Board under Chapter 314-55 WAC, and the associated legal issues related to legalization of recreational marijuana. The Commission agreed to continue their discussions at a subsequent workshop.

The next workshop on July 29, 2014 collected ideas and opinions on recreational marijuana land use issues from the Planning Commission by asking the following questions:

- Should the county confine the production, processing, and retailing of marijuana to specific zoning districts? If so, what type(s) of zoning districts would the county deem most appropriate and why?
- Are there other uses beyond those listed under WAC 314-55-050 (10) that should meet the minimum 1,000-foot distance requirement? (Schools, playgrounds, recreation

center or facility, child care center, public park, public transit center, library, or arcade not restricted to people 21 and older)

- Should the county require special setbacks or minimum lot sizes for the production, processing, and retailing of marijuana? What is the reasoning behind making these requirements?
- How concentrated should production, processing, and retailing of marijuana facilities be within an area? What are the pros and cons of doing so?
- Do you envision potential impacts to adjacent properties from the following issues?

Results of this discussion revealed Commission member's general preferences for managing land uses related recreational marijuana production and processing:

#### Location Criteria

- Restrict all recreational marijuana production to indoor facilities
- Locate production and processing facilities in industrial areas
- Expand the list of 1,000 LF separation under WAC 314-55 to include hospitals, nursing homes, and day cares
- Encourage the location of growers and processors into a concentrated area

#### Site Development Criteria

- Require 10-foot security fencing

#### Environmental Criteria

- No detection of odor off-site

#### Facilities and Services Criteria

- Close proximity to emergency services
- Connection to a public power supply (no use of generators for normal operation)
- Served by a water system and an approved sewage disposal system

#### Approval Process Criteria

- Make sure local citizens have a voice
- Comply with all county codes

Appendix A contains a summary of the Planning Commission’s discussion points that led to development of their criteria. It also includes references to Chapter 314-55 WAC and the Lewis County Code.

The Planning Commission land use criteria for businesses selling recreational marijuana were less extensive than for production and processing. They compared businesses offering marijuana retail sales to liquor stores, which are uses allowed in retail sales areas. However, there was some concern about being in close proximity with fast food businesses. Similar to production and processing, the Planning Commission wanted to let local citizens have a say as to where retail sales establishments could locate.

## Potential Ordinance Amendments

The Planning Commission’s criteria for land use regulations governing the production, processing, and retailing of recreational marijuana creates a framework for preparing draft amendments to the zoning ordinance contained in Title 17 of the Lewis County Code.

### Amendments to Definitions Section

Although the Planning Commission’s preference is to limit marijuana production and processing to “industrial areas,” there is a need to distinguish this use from “manufacturing.” Lewis County Code (LCC) 17.010.131 defines manufacturing as

“...establishments engaged in the mechanical or chemical transformation of materials or substances into new products including the assembling of component parts, the manufacturing of products, and the blending of materials such as lubricating oils, plastics, resins, or liquors.”

- Agree
- Disagree
- Needs further discussion

There are several problems with relating marijuana production and processing with “manufacturing.” While marijuana processing fits well with this definition, production does not. Manufacturing is a use allowed in four zoning districts under the county’s code; three of these four districts would be inappropriate “manufacturing” given the location criteria developed by the Planning Commission.

In addition, marijuana production more resembles “agriculture” under the LCC 17.10.011, which reads:

“Agriculture” means the use of land for horticulture, floriculture, viticulture, dairy, apiary, vegetable or animal products, or of berries, grain, hay, straw, turf, seed, Christmas trees not subject to the excise tax imposed by RCW [84.33.100](#) through [84.33.140](#), finfish in upland hatcheries, or livestock, and the necessary accessory uses for packing, treating, or storing the product; provided, however, that the

- Agree
- Disagree
- Needs further discussion

operation of any such accessory uses shall be secondary to that of normal agricultural activities. Agriculture includes activities identified in LCC 17.35.1075.

However, it is not the intention of the Planning Commission to equate marijuana production with agriculture.

Because marijuana production and processing does not fit neatly within existing terminology in the code, it is easiest to assign them unique definitions. Suggested definitions to consider including under LCC Chapter 17.10 are:

**Marijuana Processing**

“Marijuana processing” means converting harvested marijuana into useable marijuana and marijuana-infused products by any person or entity that holds a valid marijuana processor license issued by the Washington State Liquor Control Board under WAC 314-55-077 as now in effect or hereafter amended.

<input type="checkbox"/> Agree
<input type="checkbox"/> Disagree
<input type="checkbox"/> Needs further discussion

**Marijuana Production**

“Marijuana production” means the indoor growing and wholesaling of marijuana by any person or entity that holds a valid license issued by the Washington State Liquor Control Board under WAC 314-55-075 as now in effect or hereafter amended.

<input type="checkbox"/> Agree
<input type="checkbox"/> Disagree
<input type="checkbox"/> Needs further discussion

It is important to note that these definitions link marijuana production and processing to Chapter 315-55 WAC, thus incorporating all of the provisions required by the state for the operation of establishments that the Liquor Control Board have already vetted.

For similar reasons, it is easiest to distinguish marijuana retailing from other forms of retailing within the code. A suggested definition is:

**Marijuana Retailer**

“Marijuana retailer” means a retail outlet that sells useable marijuana, marijuana-infused products, and marijuana paraphernalia and is owned by any person or entity that holds a valid marijuana retailer license issued by the Washington State Liquor Control Board under WAC 314-55-079 as now in effect or hereafter amended.

<input type="checkbox"/> Agree
<input type="checkbox"/> Disagree
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Marijuana Production and Processing Amendments to Zoning Districts

Incorporating marijuana production and processing as uses within an existing zoning district is the next step.

Manufacturing and processing is a permitted or special use in four county zoning districts: the Small Town Mixed Use (STMU), the Small Town Industrial (STI), the Freeway Commercial (FC), and the Rural Area Industrial (RAI) Districts. However, the purpose statements for three of these districts, the STMU, STI, and RAI, make marijuana production and processing an inappropriate use for them given the Planning Commission’s criteria. Below are the complete purpose statements for each of these districts.

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<input type="checkbox"/> Needs further discussion

**STMU Purpose (LCC 17.45.010)**

Small towns have been the historic, cultural, and commercial hubs for rural Lewis County. As such, public infrastructure including schools, fire, and often water systems are in place. The purpose of the Mixed Use/Commercial District is to provide land areas within the small towns for the siting of commercial uses which serve the surrounding community with a broad range of retail goods and services. Property within this district may also serve to meet the residential needs of the community in accordance with the capability of local facilities. The Mixed Use/Commercial Districts are designed to assure infilling consistent with surrounding uses and the existing public facilities and character of the area.

**FC Purpose (LCC 17.65.010)**

Lewis County is centrally located on Western Washington’s principal traffic link, I-5. As the local economy has shifted away from historical resource uses, the freeway links in the community have historically provided crossroads commercial centers, focusing on the traveling public and serving resource industries, as well as local community services. The districts provide a base of support for county-wide resource activities and provide a base for needed economic activity and job growth, particularly transportation. The purpose of the Freeway Commercial District is to supply sufficient areas arranged in a concentrated form for land use activities which promote services to the traveling public, convenient access to major transportation routes, and provide areas for new commercial development which does not interfere with existing residential neighborhoods and result in new development beyond areas currently affected by the interchange or interchange oriented development.

**RAI Purpose (LCC 17.75.010 )**

Rural Area Industrial sites are rural areas of more intense development under RCW [36.70A.070](#) and have been identified where industrial activities have existed historically and are planned for future activity, in concert with plans by public agencies. The purpose of this zone is to provide guidelines for development in such zones, and to insure that such zones do not create a need for urban services or lead to urban development in rural areas.

These STMU and FC districts have a wide mix of existing uses as well as provide for a wide range of permitted and special uses in the future. Existing residential uses and the allowance for future ones in these districts create a particular concern. While marijuana production and processing fits within the purpose of the RAI district, a map of the county’s

existing zoning districts show the RAI District as randomly distributed in the county, often far from major transportation corridors, which increases response time for emergency services.

The STI District shows the most promise for fitting marijuana production and processing as a use given the location criteria set by the Planning Commission. The purpose statement for this zoning district reads:

**STI Purpose (LCC 17.55.010)**

Small towns in Lewis County, and particularly Packwood and Randle, have provided significant employment centers for substantial numbers of Lewis County rural residents, typically in the form of mills and companies servicing the forest products and agricultural industries. The purpose of the Small Town Industrial District is to assure that areas historically devoted to intensive employment activities are protected to enable communities to maintain or re-establish their economic base and to assure continuation of locations to provide services and support to maintain long-term commercially significant resource activities.

The STI District is limited to three areas in the county – Randle, Packwood, and Mineral Lake. All three areas appear to be clear of the restricted uses listed under WAC 314-55-050.<sup>1</sup> The STI District is 124.02 acres in Randle, 96.8 acres in Packwood, and 11.2 acres in Mineral. It is important to note, however, that ownership of these areas is limited to Hampton Lumber Mills, West Fork Timber, and several local public agencies. Availability of this land for potential production and processing of marijuana is unknown. Rezoning land to the STI District remains a possibility that would require amendment of both the comprehensive plan and zoning map.

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To “make sure citizens have a voice,” marijuana production and processing should require a special use permit within the STI District. This permit approval process allows the public to provide public testimony before the county’s hearing examiner to ensure an establishment is compatible with surrounding land uses. This requires adding a new section within LCC Chapter 17.55 providing for special uses; adding marijuana production and processing within the table provided in LCC 17.42.030 would also be necessary.

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If the Planning Commission was interested in including marijuana production and processing as a special use in the RAI District, it could overcome some concerns by adopting specific

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<sup>1</sup> The board shall not issue a new marijuana license if the proposed licensed business is within one thousand feet of the perimeter of the grounds of any of the following entities: elementary or secondary school, playground, recreation center or facility, child care center, public park, public transit center, library, or arcade where admission is not restricted to persons age 21 or older.

Development Standards under LCC Chapter 17.75; the STI District has a similar section (LCC 17.55.040). Provisions for restricting the size of production facilities (i.e. Tier 1 grows only) and requiring minimum parcel size, distances from adjacent uses, proximity to emergency services, and availability of public facilities and services could address many concerns. It would also provide additional guidance for reviewing future rezone requests if demand for appropriately zoned land exceeds supply.

There are two additional tools within the zoning ordinance available to marijuana production and processors: Chapter 17.20A, Industrial Land Bank Urban Growth Area, Chapter 17.020B, Master Planned Major Industrial Reclaimed Surface Coal Mine Urban Growth Areas, and Chapter 17.20C, Economic Development Urban Growth Areas. These provisions in the code do not need amendment to accommodate potential marijuana production and processing uses.

### Marijuana Retailing Amendments to Districts

The Planning Commission criteria for marijuana retailing offer more options to accommodating within the zoning code than production and processing.

It is important to keep in mind that the Liquor Control Board currently has authorized only four marijuana retail licenses for Lewis County at large outside of Centralia and Centralia.<sup>2</sup> County zoning districts that allow for retail sales include the Small Town Mixed Use (STMU), Small Town Industrial (STI), Crossroad Commercial (CC), and Freeway Commercial (FC). In addition, the Rural Development Districts (RDD) allows "isolated small business (nonresource)," a term LCC Chapter 17.10 fails to define.

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Except for the STI District, most areas zoned in this list have a mix of existing residential uses. The only districts that do not allow future residential development are the STI and FC Districts. Given historic development patterns in Lewis County, it could prove difficult locating a retail marijuana establishment any great distance from a residence or neighborhood, especially in the communities like Randle and Packwood.

Accepting this reality, the zoning districts that would best serve as potential areas for retail marijuana establishments include the STMU, STI, CC, and FC. Adding this use involves amending the table in LCC 17.42.030 to include marijuana retailing as a special use. Despite the ability to

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<sup>2</sup> These retail establishments could also locate within the Cities of Morton, Mossyrock, Napavine, Pe Ell, Toledo, Vader, and Winlock.

locate a retail business in the RDD Districts, they are predominately residential in character and inappropriate for this use.

### Special Provisions for Marijuana Production and Processing

For those Planning Commission criteria not already addressed by existing state or local regulations, amending Chapter 17.145, Supplemental Requirements, can address some of the performance criteria related to marijuana production and processing.

#### **17.145.145 Marijuana Production and Processing**

- (1) Marijuana production and processing facilities shall have an approved odor management plan that utilizes odor control technologies that eliminate off-site detection.
- (2) Marijuana production facilities must take place within a fully enclosed secured indoor facility or greenhouse with rigid walls, roof, and doors. Greenhouses shall be behind an eight-foot high, site obscuring security fence or wall.
- (3) Production and processing facilities shall connect to a public sewer and/or water service if such services are within 1,000 feet of the property line.
- (4) The use of gas, diesel, or propane generators for providing electricity, except during periods of public power supply interruption, is prohibited.
- (5) Marijuana production facilities shall shield adjoining uses and rights-of-way from interior and exterior light sources.
- (6) All structures utilized in marijuana production and processing shall conform to Title 15, Buildings and Construction.
- (7) In addition to the list of entities provided under WAC 314-55-050 (10), marijuana production and processing facilities shall not locate within 1,000 feet of a hospital, nursing home, day care, or church. The 1,000-foot restriction is measured from the shortest straight-line distance from the property line of the facility to the above uses.
- (8) Failure to obtain or maintain an approved license from the Washington State Liquor Control Board, or any other required local or state permit, will automatically revoke any special use permit issued under Chapter 17.160 LCC for marijuana production or processing.

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#### **17.145.145 Marijuana Retailing**

- (1) In addition to the list of entities provided under WAC 314-55-050 (10), marijuana retailing shall not locate within 1,000 feet of a hospital, nursing home, church, or fast-food establishment. The 1,000-foot restriction is measured from the shortest straight-line distance from the property line of the facility to the above uses.

<input type="checkbox"/> Agree
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## Consistency of Proposed Amendments with Comprehensive Plan

The amendments proposed in this report reveal no inconsistencies with the Land Use Element of the Lewis County Comprehensive Plan.

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| <input type="checkbox"/> Agree<br><input type="checkbox"/> Disagree<br><input type="checkbox"/> Needs further discussion |
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### Planning Commission Next Steps:

1. September 23, 2014 Planning Commission meeting:
  - Review and discuss the report; direct staff to develop an ordinance that reflects Planning Commission guidance at this meeting; and
  - Set an October 2014 public hearing date to take public testimony on a draft ordinance.
2. October 2014 Planning Commission meeting:
  - Hold public hearing and take public testimony on the draft ordinance;
  - Discuss the draft ordinance in light of public testimony and make changes if necessary; and
  - Adopt a recommendation on the draft ordinance for the Board of Commissioners consideration.

## Appendix A: Results of July 29, 2014 Planning Commission Workshop – Criteria for developing an ordinance

(Note: red statements specific to marijuana retail locations)

Location		Scale/Size Limits	Relationship to Existing Development	Site Development Standards	Environmental Concerns	Facilities and Services	Approval Process
Indoor operation – emp safety	Keep all tiers in same zone	No large industrial buildings in Ag	Processing in retail/commercial area	10-foot fencing <sup>3</sup>	Control of odor – study done	Close to water/power	Go through a CLEAR process
Concentrated & monitored	Retail sales areas			Concentrate buildings/ growers (size appropriate)		Emergency services available	Comply with all codes, including suppression
Limiting production & processing to industrial areas	Not near fast food			Ensure security requirements <sup>3</sup>		No generators	Handle like a liquor /smoke store
Tier 2-3 in industrial areas	Keep liquor/pot sales separate <sup>4</sup>					Connected to sewer system	Local citizens have voice
Maybe different for Tier 1 <sup>5</sup>	All grows indoors						Employees – no criminal history <sup>6</sup>
Away from hospital, nursing homes, day cares							

### Special Notes on above criteria

<sup>3</sup> WAC 314-55-083 provides extensive security requirements for marijuana producers, processors, and retailers. Chapter 314-55 WAC uses 8-foot high fencing as a standard.

<sup>4</sup> WAC 314-55-079 does not allow marijuana retailers to sell alcohol; they are restricted to selling only usable marijuana, marijuana-infused products, and marijuana paraphernalia to persons 21 years of age and older.

<sup>5</sup> Tier 1 grows have a maximum plant canopy of less than 2,000 square feet (WAC 314-55-075)

<sup>6</sup> This is difficult to integrate into a land use provision and would be onerous to enforce.