

Ordinance 900

An ordinance continuing interim zoning controls for six-months for the siting, establishment, notification, and operation of any structures or uses relating to recreational marijuana production facilities, recreational marijuana processing facilities, and recreational marijuana retail facilities, pursuant to Initiative 502, establishing local land use controls for certain zones within unincorporated Clallam County as authorized under Washington State Constitution and RCW 36.70A.390 and 36.70.795

The Board of Clallam County Commissioners makes the following findings:

- A. 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 State of Washington. 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 licensing program established by the Washington State Liquor Control Board.
- B. RCW 69.51A.140 allows local jurisdictions to adopt zoning requirements for the production, processing, or retail facilities of cannabis or cannabis products within their jurisdiction.
- C. The Washington State Liquor Control Board began accepting license applications for marijuana production, processing, and retailing on November 29, 2013 and began issuing licenses in December 2013. The thirty-day license application window was closed on December 20, 2013.
- D. 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.
- E. These regulations incorporate and reference the United States Department of Justice requests for restrictions and assurances on Washington marijuana regulation to protect public health and safety, memorialized in a joint statement by Washington State Governor Jay Inslee and Attorney General Bob Ferguson dated August 29, 2013. This statement was incorporated into the Washington State Liquor Control Board regulations, which includes but is not limited to: prohibition on locations with 1,000 feet of an 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 those age 21 or older; requirements for alarm systems and security cameras at licensed facilities; requirements for signage prohibiting consumption of marijuana on the premises and prohibiting access by persons under age 21; and limited hours of operation.
- F. Clallam 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.

- G. Nothing in this ordinance is intended nor shall be construed to authorize or approve of any violation of federal or state law.
- H. Marijuana uses are new uses that were not contemplated during the development of Clallam County's zoning districts and development regulations. "Unclassified uses" mean activities or uses that are undefined and unidentified in the County's zoning code as an allowed use, conditional use, or a prohibited use, pursuant to Section 33.03.010 (96) in the Clallam County Code. On April 2, 2014 the Department issued a policy interpretation in which marijuana producing and processing were presumptively allowed in certain zones.
- I. The Board of Clallam County Commissioners wish to grant an additional six month time extension to allow the Department of Community Development to study the land use impacts associated with marijuana production, marijuana processing, and marijuana retail facilities in zoning districts of unincorporated Clallam County.
- J. The County has concerns with the potential increase of marijuana applications that have been licensed by the State Liquor Board in Clallam County and with the potential increase in licenses that may be transferred from other jurisdictions to Clallam County.
- K. The County seeks siting, establishing, and operating marijuana facilities on compatible lands and land uses within zones that appear to be consistent with and promote the public health, safety and general welfare of the citizens of Clallam County.
- L. The Board of Clallam County Commissioners has determined that the proposed interim zoning regulations promote a County purpose as established under RCW 36.70.130 and RCW 36.70.470. Interim regulations will allow marijuana producers, marijuana processors, and marijuana retail facilities to locate in zones that appear to be consistent and compatible with surrounding land uses.
- M. The Board of Clallam County Commissioners believes it is in the public interest to allow marijuana uses in the delineated zones identified in Section 3.
- N. That in addition to applications on development received prior to the below-enumerated interim controls, the County will continue to receive and accept applications for recreational marijuana producers, recreational marijuana processors, and recreational marijuana retail facilities in zones that have been delineated as set forth in Section 3 below.
- O. RCW 36.70.795 and RCW 36.70A.390 provide that the Board of Clallam County Commissioners may adopt a moratorium, interim zoning ordinance, interim zoning map, and/or interim official controls. These statutes provide local governments with methods to preserve the status quo without rendering new regulations as moot because of continued development.
- P. The Board of Clallam County Commissioners held a work session related to the requested time extension for the interim zoning controls that were adopted under ordinance 896, for the siting, establishment, and operation of any structures or uses relating to marijuana production, marijuana processing, and marijuana retail facilities in certain zones within unincorporated Clallam County.

- Q. The Planning Commission conducted seven work sessions addressing permanent zoning regulations for marijuana production and marijuana processing, and requested that the Board of Clallam County Commissioners provide an additional six months to allow the Planning Commission time to formulate a recommendation for recreational marijuana.

BE IT ORDAINED BY THE BOARD OF CLALLAM COUNTY COMMISSIONERS:

Section 1. Interim Official Controls is created to read as follows:

- (1) The Board of Clallam County Commissioners adopts and incorporates herein the recitals made by staff, at the hearing in support of this enactment.
- (2) The Board of Clallam County Commissioners adopts and incorporates herein the ordinance of specific findings and attachments hereto defining and delineating the interim official controls in response to proposed interim control ordinance discussed below. The Clallam County Department of Community Development is working to permanently address the appropriate land use designations for marijuana land uses, as discussed below.
- (3) Receipt and acceptance of applications for conditional use permits for marijuana production, marijuana processing, and marijuana retail facilities in certain zones. Any application for a conditional use permit for marijuana production, marijuana processing, and marijuana retail facilities that was received by the Clallam County Department of Community Development after the time and date of adoption hereunder, and that does not fall within one of the delineated zones, shall be returned along with a refund of the application fees.
- (4) These interim controls shall not affect proposals for a conditional use permit for which a complete application has been accepted by the Department of Community Development prior to the effective date of this ordinance.
- (5) For purposes of these interim controls, "conditional use" shall mean any application or permitting submission or request for land use review, approvals, or authorizations by the County under Chapter 33 CCC, and as those terms are applied within Chapters 33.27, and otherwise within the County Code. For purposes of these interim controls, "official interim controls" shall mean "official controls" as defined under RCW 36.70.020(11): "legislatively defined and enacted policies, standards, precise detailed maps, or other criteria."
- (6) Amendment and savings clause. This interim controls ordinance addresses only the recreational marijuana production, marijuana processors, and marijuana retail facilities for certain zones within unincorporated Clallam County. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be unconstitutional or invalid at law, such decision shall not affect the validity of the remaining portions of this Ordinance.
- (7) Sunsetting and effective date. This enactment establishing said interim controls shall automatically expire six (6) months after its effective date unless the Board, following a public hearing, extends this Ordinance for such additional period(s) of time as provided for under the above-noted statutory provisions. The effective date of this Ordinance shall become effective ten (10) days after said adoption.
- (8) Severability. If any section, subsection, paragraph, sentence, clause, or phrase of this ordinance is declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining parts of this ordinance.

Section 2. Definitions is created to read as follows:

For the purpose of this interim controls ordinance, the definitions as set forth in RCW 69.50.010, as amended, are hereby adopted and incorporated by reference. In addition, the following terms are further defined as set forth below. In the event that a definition set forth here is deemed

inconsistent with the definitions in RCW 69.50.010, these definitions shall be modified and interpreted to be consistent with the statute. In the event these definitions cannot be so modified, the statutory definitions shall control.

(1) “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:

- (a) Type 1 processor is limited to:
 - (i) Drying, curing, and trimming; and
 - (ii) Packaging.
- (b) Type 2 processor is limited to:
 - (i) All marijuana processor 1 activities.
 - (ii) Extracting concentrates and infusing products.
 - (iii) Mechanical and chemical processing.
 - (iv) Packaging.

(2) “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 Chapter 314-55 WAC.

(3) “Marijuana retailer” means a person licensed by the State Liquor Control Board to sell useable marijuana and marijuana-infused products in a retail outlet.

(4) “Notification requirement” means property owners within 1,000 feet of the boundary of the subject property will be noticed of the proposed development request only when a conditional use permit is required.

- (5) “Production Tiers” means:
- (a) Tier 1 – less than 2,000 square feet.
 - (b) Tier 2 – 2000 to 10,000 square feet.
 - (3) Tier 3 – 10,000 to 30,000 square feet.

Section 3. Designated zones is created to read as follows:

The Clallam County Board of Commissioners adopts designated zones where recreational marijuana production and processors are allowed; designated zones that require a conditional use; and designated zones that require development standards.

Clallam County wishes to captivate on an “environmentally friendly” or “climate smart” by using cost-effective greenhouse practices that model building materials, glazing, orientation, layout and shading on targeted cultivation areas. Greenhouses must comply with the criteria as set forth in RCW 69.50.301- 369, as applicable and the Washington Administrative Code (WAC 314-55), as applicable, adopted by the Washington State Liquor Control Board.

(1) Application for Land Use Approval for Recreational Marijuana Production and Processors. Marijuana production and processing are permitted only in those zones as set forth in this section. Zones that have not been represented are prohibited.

- (a) Tier 1, 2, and 3 marijuana production and processors type 1 and 2 are permitted in the following zones as an Allowed Use:
 - Carlsborg Industrial (CI)
 - Carlsborg Commercial (CC)
 - Carlsborg General Commercial (CGC)
 - Carlsborg Village Center (CN)

- Carlsborg Village Commercial (CV)
 - Urban Center (UC)
 - Urban Regional Commercial (URC)
 - Rural Center (CEN)
 - Rural Commercial (RC)
 - Urban Reserve Industrial (URI)
 - Industrial (M)
 - Rural Limited Commercial (RLC)
 - Diamond Point Airport (DPA)
- (b) Tier 1, 2, and 3 marijuana production and processors type 1 and 2 may be permitted in the following zones as a Conditional Use:
- Urban Neighborhood Commercial (UNC)
 - Tourist Commercial (TC)
 - Western Regional Rural Center (WRC)
 - Rural Village Low (RV2)
 - Rural Village (RV)
 - Commercial Forest (CF)
- (c) Tier 1 or 2 marijuana production and processors type 1 and 2 are permitted in the following zones as an Allowed Use:
- Agricultural Retention (AR)
 - Rural Very Low (R20)
- Tier 1 or 2 marijuana production and processors type 1 and 2 are subject to the following development standards:
- (i) Minimum parcel size 15 acres or more of contiguous land ownership.
 - (ii) 200 foot minimum property line setback.
 - (iii) All business activities shall be within a permitted structure.
- (d) Tier 3 marijuana production and processors type 1 and 2 may be permitted in the following zone as a Conditional Use:
- Agricultural Retention (AR)
- Tier 1, 2, or 3 marijuana production and processors type 1 and 2 are subject to the following development standards:
- (i) Minimum parcel size 15 acres or more of contiguous land ownership.
 - (ii) 200 foot minimum property line setback.
 - (iii) All business activities shall be within a permitted structure.
- (e) Tier 1, 2 or 3 marijuana production and processors type 1 may be permitted in the following zones as a Conditional Use:
- Commercial Forest/Mixed Use 20 (CFM20)
 - Commercial Forest/Mixed Use 5 (CFM5)
 - Rural Neighborhood Conservation (NC)
 - Rural Low (R5)
 - Rural Moderate (R2)
 - Rural (R1)
 - Western Region Rural Low (RW5)
 - Western Region Rural (RW1)
 - Western Region Rural Moderate (RW2)
 - Rural Character Conservation 5 (RCC5)

- Rural Character Conservation 3 (RCC3)
- Rural Low Mixed (RLM)

Tier 1 or 2 marijuana production and processors type 1 and 2 are subject to the following development standards:

- (i) Minimum parcel size 15 acres or more of contiguous land ownership.
- (ii) 200 foot minimum property line setback.
- (iii) Property owner(s) shall reside at subject property.
- (iv) Notification requirement (Section 2. Definitions).

(2) Marijuana retailers are allowed only as set forth in this section:

(a) Marijuana retail sales are permitted in the following zones as an Allowed Use:

- Rural Commercial (RC)
- Rural Village (RV)
- Rural Village Low (RV2)
- Diamond Point Airport (DPA)
- Rural Center (CEN)
- Western Region Rural Center (WRC)
- Rural Neighborhood Commercial (RNC)
- Rural Limited Commercial (RLC)
- Tourist Commercial (TC)
- Urban Neighborhood Commercial (UNC)
- Urban Regional Commercial (URC)
- Urban Center (UC)
- Carlsborg Village Commercial (CV)
- Carlsborg Village Center (CN)
- Carlsborg Commercial (CGC)
- Carlsborg Commercial (CC)

(b) Marijuana retail sales may be located in the following zones as a Conditional Use:

- Urban Reserve Industrial (URI)
- Carlsborg Industrial (CI)

Section 4. The Clallam County Board of Commissioners makes the following conclusions:

- A. The interim zoning regulations proposed by this ordinance is consistent with Washington State law and the County Code.
- B. The interim general development standards proposed by this ordinance are consistent with Washington State law and the County Code.
- C. The interim regulations proposed by this ordinance do not result in an unconstitutional taking of private property.
- D. This ordinance is necessary to allow time for the Department of Community Development to develop and adopt permanent regulations related to the siting, establishment, and operation of any structures or uses relating to the marijuana production, marijuana processing, and marijuana retail facilities in the appropriate zoning districts in unincorporated Clallam County.

Section 5. Any finding which should be deemed a conclusion, and any conclusion which should be deemed a finding, is hereby adopted as such.

Section 6. Pursuant to Article III, Section 3.10 of the Clallam County Home Rule Charter, the Clallam County Board of Commissioners finds and concludes that adopting an interim zoning ordinance to regulate marijuana production, marijuana processing, and marijuana retail facilities is necessary for the immediate preservation of the public peace, health or safety. Other options would not be adequate to prevent a potentially large number of marijuana businesses from obtaining state licenses for locations in zones where they would be detrimental to the public peace, health, and safety.

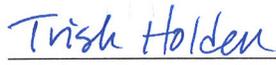
ADOPTED this seventeenth day of March 2015

BOARD OF CLALLAM COUNTY COMMISSIONERS


Jim McEntire, Chair


Mike Chapman

ATTEST:


Trish Holden, CMC, Clerk of the Board


Bill Peach