



ORDINANCE NO. 535 -2016

Amending Chapter 17.520 "Marijuana Regulations" for Medical Marijuana

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 regulations relating to medical marijuana in compliance with Washington's law on medical marijuana.
2. The Washington State Liquor & Cannabis Board is currently accepting license applications for the production, processing, and retailing of medical marijuana for the availability of medical marijuana on July 1, 2016.
3. Kitsap County wishes to reduce the risk of confusion and code enforcement issues by adopting zoning regulations that provide clarity on where medical marijuana businesses may locate in unincorporated Kitsap County.
4. 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 RCW 36.70.750.

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

1. On May 12, 2016, the County issued to the Washington State Department of Commerce its Notice of Intent to Adopt in accordance with RCW 36.70A.106, with a request for expedited review.
2. The SEPA Responsible Official issued a threshold decision for this draft ordinance on May 12, 2016 and comments were accepted through June 3, 2016. No administrative appeals are allowed for this ordinance, a non-project legislative action, under KCC 21.04.290(E)(2).
3. On June 7, 2016, 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 June 7, 2016, the Kitsap County Planning Commission adopted Findings of Fact unanimously.
5. On July 13, 2016, the Kitsap County Commissioners held a workstudy to consider the DCD and Planning Commission recommendations.
6. On August 8, 2016, the Kitsap County Commissioners held a public hearing after proper

notice, and considered public comment and the entire record related to this ordinance. On this date, they also deliberated and made a final decision to approve this ordinance.

Section 3. General Substantive Findings. The Kitsap County Board of Commissioners makes the following findings regarding the amendment of chapter 17.520 KCC:

1. Marijuana, both recreational and medical, remains 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, possession and use 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. Marijuana is also still classified as a controlled substance under state law in RCW 69.50.204(c)(22).
3. Following the passage of Initiative 692 in November 1998, the Washington State Legislature passed chapter 69.51A RCW regarding medical marijuana and provided an affirmative defense to the charge of possession for “qualifying patients.”
4. In April 2011, the Legislature passed a bill (ESSSB 5073) amending chapter 69.51A RCW in an attempt to create a comprehensive regulatory scheme for providing medical marijuana. The Governor, however, vetoed many sections including the registry and the ability to have licensed medical dispensaries, but left intact the ability for qualifying patients to collaborate with other qualifying patients in a “collective garden.”
5. In 2012, Washington voters adopted Initiative 502. Initiative 502 required the state to create a system for the licensed production, processing and retail distribution of recreational marijuana, and this system is laid out in chapter 69.50 RCW.
6. In 2015, the Legislature passed amendments to both chapter 69.50 RCW and chapter 69.51A RCW to bring medical marijuana into the recreational licensing system and to amend the system to accommodate medical issues. The Washington Liquor and Cannabis Board (LCB) will still issue licenses for the production, processing and retail of recreational marijuana and will allow those retail licensees who have been given “endorsements” to also sell medical marijuana. If approved by the LCB, licensed producers and processors are also allowed to grow medical marijuana to sell to retailers with endorsements.
7. The 2015 legislation also prohibits collective gardens as of July 1, 2016 and replaces them with more limited “cooperatives,” which only allow up to four qualifying patients or designated providers to grow medical marijuana, subject to other restrictions. The location of the cooperative must be the domicile of one of the participants and only one cooperative may be located per property tax parcel.
8. This ordinance satisfies the procedural and substantive requirements of and is consistent with GMA.

9. This ordinance is consistent with the Kitsap County Comprehensive Plan.
10. Nothing in this ordinance is intended nor shall be construed to authorize or approve of any violation of federal or state law.
11. Nothing in this ordinance prohibits a qualifying patient or a designated provider from individually growing, processing or using medical marijuana in accordance with chapter 69.51A RCW.

Section 4. Kitsap County Code section 17.520.020, "Definitions," adopted by Ordinance 512-2013 (then as KCC 17.465), is amended as follows:

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 and Cannabis board to process marijuana into useable marijuana, and marijuana-infused products, package and label marijuana concentrates, useable marijuana, and marijuana-infused products for sale in retail outlets, and sell marijuana concentrates, 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 and Cannabis 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 and Cannabis board to sell marijuana concentrates, 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.

Section 5. Kitsap County Code section 17.520.030, "Location," adopted by Ordinance 534-2016, is amended as follows:

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 17.520 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 17.520 KCC.

C. Marijuana Retailers

Subject to the requirements of this chapter, marijuana retailers, both with and without endorsements, 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 this chapter.

1. Marijuana retailers may be located in the Commercial (C), Regional Center (RC), Low Intensity Commercial (LIC), Neighborhood Commercial (NC) and Rural Employment Center (REC) zones.

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.

Section 6. Kitsap County Code section 17.520.060, "Nonconforming Uses," is reenacted in its entirety to confirm that all use constituting or purporting 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 not be considered a legally established use under Kitsap County Code and shall not be entitled to claim legal non-conforming status.

Section 7. **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 8. **Effective Date.** This Ordinance shall take effect immediately.

Section 9. **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.

Dated this 8th day of August, 2016

**BOARD OF COUNTY COMMISSIONERS
KITSAP COUNTY, WASHINGTON**

ATTEST:



E. E. Wolke
EDWARD E. WOLKE, Chair

Charlotte Garrido
CHARLOTTE GARRIDO, Commissioner

Dana Daniels
Dana Daniels, Clerk of the Board

Robert Gelder
ROBERT GELDER, Commissioner

Approved as to form:

Paul Nickle
Kitsap County Prosecutor's Office

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