

ORDINANCE NO. 083814

AN ORDINANCE ADOPTING CHAPTER 19.64 - MARIJUANA AND AMENDMENTS TO THE WHITMAN COUNTY CODE CHAPTERS AS FOLLOWS:

- Amend Chapter 19.03 - Definitions, adding definitions of words used in the marijuana code and amending the definition of Agricultural Activity to exclude marijuana;
- Amend Chapter 19.06 - Board of Adjustment to include a notification distance to adjacent landowners of 1,500 feet;
- Amend Chapter 19.10 - Agricultural District to exclude the production, processing and sale of controlled substances including marijuana from the term agricultural-agricultural, and add marijuana production, processing and retailing to the list of conditional uses;
- Amend Chapters 19.15 and 19.16 - North and South Pullman-Moscow Corridor Districts to add marijuana retail stores and indoor marijuana production and processing to the list of conditional uses;
- Amend Chapter 19.20 - Heavy Commercial District, Chapter 19.30 - Light Industrial District and Chapter 19.31 - Heavy Industrial District to add indoor marijuana production and processing to the list of conditional uses, as described in the proposed ordinance hereto attached and made a part of by reference. These changes are consistent with the Whitman County Comprehensive Plan and Zoning Ordinance.

BE IT ORDAINED and enacted by the Board of County Commissioners of Whitman County, State of Washington, it having been determined by the Board after hearing the Planning Commissions' Recommendations and Findings of Fact, after the Whitman County Commissioners' public hearing and adoption of their Findings of Fact.

PASSED AND APPROVED by the Board of Whitman County Commissioners of Whitman County, Washington on the 28th day of December 2020.

BOARD OF COUNTY COMMISSIONERS
OF WHITMAN COUNTY, WASHINGTON

ATTEST:

Michael Largent, Chairman

Maribeth Becker, CMC
Clerk of the Board
BY: Connie Ellis
Deputy Clerk of the Board

Arthur D Swannack, Commissioner

Dean Kinzer, Commissioner

CHAPTER 19.64 - MARIJUANA

Sections:

Section 19.64.010 - Purpose and Intent
Section 19.64.020 - Applicability
Section 19.64.030 - Definitions
Section 19.64.040 - Marijuana Production and Processing Permitted Zoning Districts
Section 19.64.050 - Development Standards
Section 19.64.060 - Conditional Use Submittal Requirements

Section 19.64.010 - Purpose and Intent

The purpose of this chapter is to establish zoning regulations which address the producing, processing, and retailing of marijuana. This chapter establishes minimum

performance standards to address public health, welfare, and safety impacts from such facilities.

Section 19.64.020 - Applicability

This chapter applies to land being used for marijuana production, processing, and retailing licensed by the state of Washington in all portions of unincorporated Whitman County. Outdoor growing of marijuana is prohibited. This Chapter does not apply to the production of hemp nor medical marijuana use.

Section 19.64.030 - Definitions

Whitman County shall rely upon definitions set forth in Chapter 314-55 WAC, RCW 69.50.101, and WCC Chapter 19.03, as each now exists or may hereafter be amended.

Agricultural Activity: The County recognizes the growing of licensed marijuana to be an agricultural land use as contemplated by the County Comprehensive Plan, however, for the purposes of this Chapter, the production, processing, and sale of marijuana is not considered an agricultural activity. For the definition of Agricultural Activity see WCC Chapter 19.03.025.

Section 19.64.040 - Marijuana Production and Processing Permitted Zoning Districts

- A. Indoor marijuana production and processing may be permitted in the following zoning districts:
 - 1. Agricultural District
 - 2. North Pullman-Moscow Corridor District
 - 3. South Pullman-Moscow Corridor District
 - 4. Heavy Commercial District
 - 5. Light Industrial District
 - 6. Heavy Industrial District
- B. Marijuana retail outlets may only be permitted in the following zoning districts:
 - 1. North Pullman-Moscow Corridor District
 - 2. South Pullman-Moscow Corridor District

The maximum number of retail outlets is limited to two.

Section 19.64.050 - Development Standards

- A. Indoor marijuana production, processing and retailing
 - 1. Indoor marijuana production, processing, or retailing requires a conditional use permit. A pre-application meeting with the Planning Department is required prior to the submittal of a conditional use application.
 - 2. Only marijuana producers, processors, and retailers with a current, validly issued license by the Washington State Liquor and Cannabis Board, compliant with all local development regulations, shall be allowed to apply for a conditional use permit. When a conflict exists such that the Washington State Liquor and Cannabis Board has issued a license in a location where activity is prohibited by regulation, the local regulations shall prevail.
 - 3. Marijuana producers, processors, and retailers shall be subject to the development standards of the underlying zoning district, the Whitman County Code, and all other local and state laws except as modified in this chapter.
 - 4. No marijuana production, processing, or retailing shall be permitted within a dwelling unit or within a building physically attached to a dwelling unit.
 - 5. Indoor marijuana production and processing in all permitted zoning districts shall be within an entirely enclosed building.
 - 6. No marijuana production, processing, or retailing operations shall emit odors of marijuana that are detectable at or beyond the lot lines of the facility. The County Planner may issue a written notice to the holder of a conditional use permit issued pursuant to this chapter that odor has been detected in violation of this section. Any odor condition detected must be cured within

seven business days of the conditional use holder's receipt of the written notice of violation. If a second violation occurs, the County Planner shall take the conditional use permit holder back to the Board of Adjustment or Hearing Examiner for a review of the permit. If odors cannot be contained within the lot lines of the facility the Board of Adjustment or the Hearing Examiner shall terminate the conditional use permit.

A policy shall be written by the Whitman County Planning department regarding enforcement of violations of section 19.64.050 (6)-Odor Emissions. At a minimum the policy will include training of staff to detect marijuana odors, use of equipment (if any) to detect marijuana odors and the response process to be followed when a complaint is received. This policy will be reviewed with the Board of County Commissioners initially within 3 months of approval of the new Marijuana Code and then periodically thereafter and shall be kept on file at the planning department office.

7. The applicant shall install an exhaust system that is designed and constructed to capture odors and sources of contaminants to prevent spreading of contaminants or odors to the surrounding areas. The system must be designed by a licensed Washington State professional engineer.
8. Lighting for marijuana production, processing, and retail operations, including any required security lighting, shall be designed, installed, and maintained so as to eliminate light directly projecting across property lines.
9. The Board of Adjustment or Hearing Examiner shall determine the setback requirement for all marijuana indoor production and processing facilities based on site specific and operational characteristics (such as topography, use of structures to enhance plant growth, use of odor control systems, use of temporary growing structures, ventilation system, prevailing wind direction, etc.) and probable impacts to neighboring properties. In no case shall setbacks for indoor production and processing buildings be less than 100 feet from front, rear, and side property lines. If a fence or other type of physical barrier with cameras monitoring the area outside the fence is used, the barrier or fence shall be setback 25 feet from the front, rear, and side property lines. Any increase of the setbacks is subject to the site specific and operational characteristics described above.
10. No indoor marijuana production or processing shall be allowed on lots or parcels less than five (5) acres. The land used for this must be a stand-alone legal parcel.
11. Licensed indoor marijuana production, processing, and retailing shall not be permitted within one thousand 1,000 feet of the property lines of the following "sensitive uses".
 - a. Elementary or secondary schools;
 - b. Playgrounds;
 - c. Recreation centers or facilities;
 - d. Child-care centers;
 - e. Public parks and trails;
 - f. Public transit centers;
 - g. Libraries;
 - h. Game arcades (where admission is not restricted to persons age 21 or older);
 - i. Churches;
 - j. Any parcel containing a licensed marijuana retail outlet;
 - k. Retirement/senior/elder care facilities;
 - l. Hospitals and medical clinics;
 - m. Drug treatment centers;
 - n. The county fairgrounds;

- o. Existing residences and any unbuilt residential parcels issued with either a Certificate of Zoning Compliance (CZC), a Residential Housing Certificate (RHC), and any unbuilt lot within a Cluster Residential District (CRD), with the following exception for the heavy commercial, light industrial, or heavy industrial zones:

In the heavy commercial, light industrial or heavy industrial zones, licensed indoor marijuana production and processing shall not be permitted within 1,000 feet of existing residences and any unbuilt residential parcels issued with either a Certificate of Zoning Compliance (CZC), a Residential Housing Certificate (RHC), and any unbuilt lot within a Cluster Residential District (CRD), unless such residence or lot is less than 1,000 feet from the zone boundary regardless of the zone the residence is located within, in which case the buffer shall be 500 feet.

The 500-foot or 1000-foot buffer distance must be measured as the shortest straight-line distance from the property line of the proposed business location to the property line of any of the entities aforementioned.

- 12. The subsequent establishment of a sensitive use listed in paragraph 11 above, within 1,000 feet of a legally established and licensed marijuana production, processing, or retail facility, shall not be prohibited by this Chapter and shall thereby not render a valid conditional use permit non-conforming.
- 13. Waste disposal from all structures and uses serving production and/or processing of marijuana shall conform to WAC 314-55-097, as now in effect or as hereafter amended. If any such waste may be designated dangerous waste under WAC 173-303, as now in effect or hereafter amended, then the waste generator shall bear the responsibility for waste characterization and disposal pursuant to the rules of the Washington State Department of Ecology or any other appropriate regulatory authority.
- 14. No fertilizers, chemicals, gases, or hazardous materials used in the growing or processing of the marijuana plants shall be allowed to enter an on-site septic system, sanitary sewer, or stormwater system, nor be released into the atmosphere where the facility is located.
- 1. Any soil amendments, fertilizers, other crop production aids, and pesticides used in the indoor production and processing of marijuana must comply with WAC 314-55-084.
- 2. In the Agricultural District, no facility engaged in marijuana production and/or processing may locate within 1,500 feet of the municipal boundaries of incorporated towns and unincorporated communities within Whitman County. Any incorporated town may request the above distance be changed to any distance between zero (0) and 1500 feet by submitting a written resolution requesting the specific distance to the Board of County Commissioners prior to January 1st, 2023. Until and unless such request is received, the buffer distance shall remain at 1500 feet. Marijuana retail operations will comply with the setbacks from the underlying zoning district.
- 17. Upon notice of violation the County Planner may direct compliance. Upon failure to comply the permit may be suspended [per WCC 19.06.010(2)] by the Board of Adjustment or Hearing Examiner until necessary corrections are made or terminated upon failure to comply or repeated violations.

Section 19.64.060 - Conditional Use Submittal Requirements

The applicant shall submit the following to the Planning Department:

- 1. A site plan drawn to a standard scale. The site plan shall depict and describe the following: (a) the location and total area of the licensed

facility; (b) the distances from the production (grow) areas and/or processing facilities to all adjacent buildings and property lines; (c) all existing and intended uses of any buildings or structures, grow areas, parking areas, property lines, physical land features such as roads, utilities, driveways and any critical areas; (d) the location of the security fence and the distance of the fence from the property's lot lines. The security fence must be at least 25 feet from all lot lines.

2. A location plan: The applicant shall submit a map, drawn to scale, showing all applicable setbacks.
3. A lighting plan: Buildings shall have internal shielding (such as blackout curtains) to prevent glare and light trespass from the building's interior walls and roof, so that lighting sources are not visible from off-site residences and public roads. Conditions of approval for any conditional use permitted under this chapter shall require compliance with the lighting plan. At the time of application for a building permit, proof of interior wall and roof shielding shall be submitted to the County Planning Department. All exterior lighting shall be designed to be downward facing and shielded to prevent light directly projecting across property lines.
4. A security plan: A marijuana business shall meet all security requirements as required by WAC 314-55 and shall provide proof of such operational security system.
5. A waste disposal plan: All fertilizers, chemicals, gases, and hazardous materials shall be handled in compliance with all applicable local, state, and federal regulations. No fertilizers, chemicals, gases, or hazardous materials shall be allowed to enter an on-site septic system, sanitary sewer or storm sewer system, nor be released into the atmosphere where the facility is located. Waste materials generated from any facility must be disposed of in accordance with the operating plan filed as part of a marijuana license application and consistent with all applicable federal, state, and local regulations.
6. Variance to setbacks: If a variance to setbacks is requested, specify the setback distance. If the setback distance is requested to be decreased a waiver from the adjacent landowner is to be provided in the CUP application. Also include in the application the reason(s) why a variance is being sought.