

OKANOGAN COUNTY COMMISSIONERS'

ORDINANCE 2022 - 8

An ordinance adopting amendments made to OCC 17A.290 Cannabis Operations and 17A.220 District Use Chart in Okanogan County, Washington.

WHEREAS, The Washington State Liquor and Cannabis Board (WSLCB) has adopted rules to license production, processing, and retail sales of recreational cannabis and cannabis products; and

WHEREAS, Okanogan County has adopted Okanogan County Code 17A.290 in July 2016 creating review criteria and procedures for cannabis operations within Okanogan County consistent with regulations of Washington State and administered by the WSLCB, as they pertain to the authorization of licensed cannabis operations; and

WHEREAS, the County has determined that additional study and analysis is necessary to determine the impacts of existing cannabis operations, and particularly cannabis production (or "grow") operations, to the environment and to adjacent property owners; and

WHEREAS, cannabis grow operations pose unique impacts in terms of land use conflicts that differ in frequency and intensity from impacts generally experienced with cannabis processors and retailers; and

WHEREAS, the County has identified instances where WSLCB has issued licenses for cannabis grow operations at addresses that do not exist in the County's land records; and

WHEREAS, the County has identified instances where the Okanogan County Office of Planning and Development ("OCOPD") previously issued land-use entitlement letters relating to grow operations that are no longer in County files; and

WHEREAS, inspections of some marijuana grow operations in August 2021 revealed operations that did not match site plans on file with OCOPD; and

WHEREAS, in August 2021, the County had determined that the WSLCB had issued approximately 125 licenses for cannabis grow operations in Okanogan County, while the OCOPD had issued 85 permits for cannabis grow operations in Okanogan County; and

WHEREAS, the Board of County Commissioners in August 2021 determined it necessary to enact a moratorium on permitting new cannabis grows and the expansion of existing cannabis grows to ensure compliance with Okanogan County Code Ch. 17A.290 (Cannabis Operations), Okanogan County Code Ch. 15 (Building and Construction), and Washington State Liquor and Cannabis Board licensing and permitting requirements; and

WHEREAS, on August 18, 2021, the BOCC convened a public hearing on Ordinance No. 2021-9 which established a temporary moratorium on the permitting of new cannabis grows and the expansion of existing cannabis grows in Okanogan County, Washington; and

WHEREAS, subsequent to the adoption of Ordinance No. 2021-9 in August 2021, OCOPD staff have been meeting with existing growers to review the growers' WSLCB-issued licenses and existing site plans for the purpose of assisting the growers to bring

cannabis grow operations into compliance with Okanogan County Code (OCC 17A.290); and,

WHEREAS, in order to accommodate harvest season, the BOCC extended the deadline for cannabis growers to scheduling meetings with OCOPD from January 1, 2022, to February 15, 2022; and

WHEREAS, Ordinance No. 2021-9 ordained the following:

- 1) A moratorium is placed on the permitting of all new cannabis grows and the permitting of any expansion of existing cannabis grows in Okanogan County under Okanogan County Code 17A.290 and Title 15.
- 2) Existing cannabis grows are required to set an appointment with the Okanogan County Office of Planning and Development provide their current State licenses and existing site plan of their operation by January 1, 2022.
- 3) Existing cannabis grows that do not meet the requirement of providing current licensing and site plans of their operations will have any permits or approvals received from Okanogan County revoked and a notice will be sent to the Washington State Liquor and Cannabis Board regarding noncompliance and revoked permit.
- 4) The Okanogan County Office of Planning and Development is directed to revisit Okanogan County Code 17A.290 to make amendments to address the issues they are dealing with pertaining to cannabis permitting, siting, regulation, and enforcement including establishing an Annual Registration requirement and fees.
- 5) This moratorium will expire six months after adoption unless otherwise extended or repealed.

WHEREAS, the BOCC convened a public hearing on March 21, 2022, to consider whether the moratorium adopted pursuant to Ordinance No. 2021-9 should terminate or be extended; and

WHEREAS, the BOCC has determined there is still more work to accomplish than time allows under the moratorium adopted pursuant to Ordinance No. 2021-9; and

WHEREAS, the BOCC extended the moratorium for new cannabis operations and the expansion of existing cannabis operations in Okanogan County with the adoption of Ordinance 2022-2 which ordained the following:

1. **Moratorium Extended.** The moratorium on the permitting of new cannabis grows and the expansion of existing cannabis grows in Okanogan County, Washington adopted pursuant to Ordinance No. 2021-9 is extended for an additional six-month period and is otherwise affirmed and amended as follows.
 - a. A moratorium is placed on the permitting of all new cannabis grows and the permitting of any expansion of existing cannabis grows in Okanogan County under Okanogan County Code 17A.290 and Title 15.
 - b. Existing cannabis growers shall schedule an appointment with OCOPD to occur no later than April 1, 2022, for the purpose of reviewing current WSLCB-issued licenses, the status of existing County permits, and grow operation site plans .

c. Existing cannabis growers that do not schedule and complete the aforementioned appointment with OCOPD on or before April 1, 2022, may be subject code enforcement consistent with Okanogan County Code Ch. 17A.360.

2. **Term of Moratorium.** The moratorium imposed by this Ordinance shall become effective on the date hereof, and shall continue in effect for six months unless repealed, extended, or modified by the BOCC.
3. **Work Plan.** OCOPD t is directed to develop a work plan to study Okanogan County Code Ch. 17A.290 and consider whether the ordinance or any other ordinance should be amended to address issues the County is currently experiencing related to cannabis permitting, siting, regulation, and enforcement, to include the establishment of an Annual Registration requirement and fees.
4. **Findings of Fact.** The recitals set forth above are hereby adopted as the County's findings of fact in support of the moratorium imposed by Ordinance No. 2021-9 and this Ordinance No. 2022-2.
5. **Effective Dates.** The moratorium set forth in this Ordinance shall be in effect for a period of six months from the date this Ordinance is passed and shall automatically expire on that date unless extended as provided in RCW 35A.63.220 and RCW 36.70A.390, or unless terminated sooner by the BOCC.

WHEREAS, to date, the Planning staff has met with all but 4 cannabis operators and have addressed compliance on 138 cannabis operations and 68 parcels with existing cannabis operations in Okanogan County.

WHEREAS, the Planning staff met with the Washington State Liquor and Cannabis Committee on April 7, 2022.

WHEREAS, on May 23, 2022 the Planning staff met with the Planning Commission to go over proposed and suggested changes to OCC 17A.290 and OCC 17A.220.

WHEREAS, the proposed code amendment was noticed for public comment from July 13, 2022 to August 22, 2022.

WHEREAS, the SEPA responsible official issued a Determination of Significance and published notice of the determination on July 13 & 14, 2022.

WHEREAS, the final notice of DNS was published on August 10 & 11, 2022 and August 17 & 18, 2022 in the official news of record for Okanogan County, the Okanogan Valley Gazette.

WHEREAS, notice of public hearing was published in the official news of record (Okanogan Valley Gazette) on August 10 & 11, 2022 and August 17 & 18, 2022.

WHEREAS, a public hearing was held with the Planning Commission to take public testimony and review written testimony received on the proposed code amendment to OCC 17A.290 and OCC 17A.220 on August 22, 2022.

WHEREAS, the Planning Commission finished deliberations and directed staff to transmit the proposed code amendment to OCC 17A.290 and OCC 17A.220 along with their recommendation to support the recommendation of the Planning department shown in the staff report to the Board of County Commissioners on August 22, 2022.

WHEREAS, a public meeting was held by the Board of County Commissioners during their regular agenda on August 29, 2022 at 11 a.m. to adopt the code amendments proposed under OCC 17A.290 and OCC 17A.220 in the Commissioners Hearing Room.

BE IT THEREFORE ORDAINED:

1. The Okanogan County Board of County Commissioners adopts the amendments to OCC 17A.290 Cannabis Operations as ATTACHMENT "A" and OCC 17A.220 District Use Chart proposed by the Planning Department and recommended by the Planning Commission as ATTACHMENT "B".
2. The BOCC adopts findings of fact as ATTACHMENT "C" and conclusions of law as ATTACHMENT "D" which supports the decision to amend OCC 17A.290 Cannabis Operations and OCC 17A.220 District Use Chart
3. The BOCC adopts an Annual Registration Fee of \$500.00 for all Cannabis Operations with an annual registration due by January 1st of each year.

DATED at Okanogan, Washington this 29th day of August 2022.

ATTEST:


Laleña Johns, Clerk of the Board



**BOARD OF COUNTY COMMISSIONERS
OKANOGAN, WASHINGTON**


Andy Hoyer, Chairman


Chris Branch, Member

APPROVED AS TO FORM:

Esther Milner, Civil Deputy PA


Jim DeTro, Member

Chapter 17A.290

CANNABIS OPERATIONS

Sections:

- 17A.290.010 Purpose and intent.
- 17A.290.020 Types of cannabis operations.
- 17A.290.030 Permit required.
- 17A.290.040 Conditions of approval.
- 17A.290.050 License – Washington State Liquor and Cannabis Board.
- 17A.290.060 Other permits.
- 17A.290.080 Legal preexisting cannabis operations.
- 17A.290.090 Enforcement

17A.290.010 Purpose and intent.

The purpose of this chapter is to create review criteria and procedures for cannabis operations within Okanogan County. It is further the intent of this chapter to be consistent with regulations of Washington State and administered by Washington State Liquor and Cannabis Board, as they pertain to the authorization of licensed cannabis operations. (Ord. 2016-4 § 1 (Att. A), 2016).

17A.290.020 Types of cannabis operations.

Cannabis operations are categorized into three separate types of activities which are reflective of the cannabis industry. These categories are similar to those categories defined by Washington State and administered by Washington State Liquor and Cannabis Board. The categories are:

A. Cannabis processing (see OCC 17A.20.590 for definition).

B. Cannabis production (see OCC 17A.20.595 for definition).

1. Indoor grow.

2. Outdoor grow.

C. Cannabis retail (see OCC 17A.20.600 for definition). (Ord. 2016-4 § 1 (Att. A), 2016).

17A.290.030 Permit required.

A permit issued under provisions of this chapter is required in order to operate a cannabis operation. See Chapter 17A.220 OCC, District Use Chart, for specific permit requirements. Application for and/or issuance of a license from the State of Washington does not vest the activity under the Okanogan County Code for any type of cannabis operation.

A. The various types of cannabis operations may be subject to differing permit requirements. All within the same zone district, one category of cannabis operation may be outright permitted while another category may require a conditional use permit or not be permitted at all.

B. One application, and its associated permit, may include more than one type of cannabis operation so long as both operations are listed as a permitted or conditional use by the district use chart (Chapter 17A.220 OCC). For example, a permit may authorize cannabis production and cannabis processing on the same property. (Ord. 2016-4 § 1 (Att. A), 2016).

C. All cannabis producers and processors will register annually with the Okanogan County Office of Planning and Development. Application for annual registration will be made to the Okanogan County Office of Planning and Development upon a form to be furnished by the Director of Planning and Development requiring such information as may be reasonably related to the ownership, parcel, and/or conduct of such business. The fee for such application shall be established by resolution of the Okanogan County Board of County Commissioners.

D. Any parcel permitted for a cannabis operation must be under the control of the State License holder. The applicant will submit a copy of all deeds, leases, agreements, or recorded instruments indicating the license holder's interest, whether possessory or real, in the parcel on which a production and/or processing facility is located.

17A.290.040 Conditions of approval.

A permit or conditional use permit shall include the following conditions:

A. The project shall have a lawful source of water.

1. From an irrigation district.
2. If on a water right, that the use is within the approved limits of the water right certificate.
3. If on an exempt well, that the total for any project (whether one user on one or more properties or more than one user on a single parcel) not exceed exempt well limits (maximum appropriation of 5,000 gpd, except within Water Resource Inventory Area 49 the maximum appropriation is 3,000 gpd) and must be consistent with instream flow rules for Water Resource Inventory Area 48 adopted in Washington Administrative Code 173-548 or other rules regulating permit exempt wells and daily withdrawal limits.

B. To ensure compliance, the conditions of approval shall include:

1. Continued operations shall be in compliance with all Okanogan County Code provisions, state laws and regulations, and permit conditions of approval.
2. The facility shall be in compliance with the following to the extent applicable to the agriculture activity:
 - a. Fugitive dust: WAC 173-400-040(9).
 - b. Visible emissions: WAC 173-400-040(2).
 - c. Fugitive volatile organic compound (VOC) emissions: WAC 173-400-040(4).
 - d. Odors: WAC 173-400-040(5).
 - a. For the purpose of this section, Outdoor Grow Operations that meet the setback requirements of OCC 17A.290.040 (B)(9) shall be presumed to be in compliance with OCC 17A.290.040(B) (2d).
 - b. Indoor Grow Operations and Processor Facilities which are located within 1000 feet of the entities listed in 17A.290.040 (B)(4a thru f inclusive) must install and maintain adequate odor abatement/filtration systems.
 - e. Noise: In addition to compliance with OCC 9.16 Noise Disturbances the following will apply: WAC 173-58-080 and 173-60-010 to 173-60-120 including definitions: WAC 173-60-020 and 173-60-030, and maximum permissible noise levels: WAC 173-60-040.
 - f. Disposal of waste shall comply with WAC 314-55-097.

g. Signage: Cannabis operations sited within 1000' of entities identified in 17A.290.040 (B) (4a thru f) are limited to no more than two separate signs identifying a facility by the licensee's business name or trade name.

Signs must be wall mounted to the building or permanent structure and are limited to six hundred square inches each in size. If illuminated, they shall be indirectly illuminated.

Safety, directional, State or county mandated signs do not count toward the above two-sign limit.

h. All lighting, including but not limited to grow lights, security lighting and illumination of signs, shall be downcast and shielded from the view of neighboring properties.

i. Adequate off-street parking shall be provided. (Ord. 2016-4 § 1 (Att. A), 2016).

3. Outdoor cannabis operations shall not be sited within 2000 feet of public and private schools, except a cannabis operation may be sited within 2000 feet of a public or private school, but in any event not less than 1000 feet, if the following exceptions apply:

1. A topographical feature such as a ridgeline blocks the cannabis operation visually from the school
2. A major topographical feature, such as a river lies between the cannabis operation and the school.

4. Cannabis Processing Facility (17A.020.590) or Indoor Grow Cannabis Production Facility (17A.020.595) must be sited a minimum of 100' from the perimeter of the grounds of any of the following entities. The distance shall be measured as the shortest straight line distance from the property line of the proposed building/business location to the property line of the entities listed below:

- a. Recreation center or facility
- b. Child care center
- c. Public park facilities other than those facilities used for youth recreation, such as a baseball diamond or basketball court
- d. Public transit center
- e. Library; or
- f. Any game arcade (where admission is not restricted to persons age twenty-one or older).

Indoor grows sited within 1000' of entities listed in 17a.290.040 (B) (4a thru f) are required to have sight-obscure windows.

5. No Cannabis Production facility may be sited on a parcel less than 5 acres in size.

6. Required fencing (and all structures for cannabis production and processing) will adhere to the following property line setbacks:

1. Front, minimum is 100 feet;
2. Side, minimum is 100 feet;
3. Rear, minimum is 100 feet;

7. Outdoor cannabis production operations must be fenced with an 8 ft. or higher sight-obscuring fence consistent with WAC 314-55-075. The fence must be fit for its intended use, kept in good repair, and made of materials that are neutral tones and alike in shape and color. The use of oriented strand board (OSB), repurposed materials (e.g., tires, fruit crates, rubbish, etc.), and non-permeable plastic material, is not allowed. Permitted types of fencing includes:

- a. Slated chain link fencing, or
- b. Wood fencing with approved black fabric covering, or
- c. Wood with sheet metal (tin sheets) of the same neutral tone color and nonreflective.

8. Addressing: The following addressing requirements must be met:

- a. Proof of legal access.
- b. A physical address must be applied for and obtained from Okanogan County Planning prior to the issuance of a permit or state license for cannabis operation.
- c. The physical address issued by Okanogan County Planning must match the address that is on the State issued Cannabis Operation license.

9. New Location or Expansion of Location:

All expansions or relocation of cannabis operations must apply for all permits required and receive the proper approvals from both the local authority and State Liquor Cannabis Board prior to the expansion or relocation.

10. Upon notice of violation the county may direct compliance and upon failure to comply the permit may be suspended until necessary corrections are made or terminated upon failure to comply or repeated violations.

11. Appeals of any violation notice shall be to the hearing examiner.

17A.290.050 License – Washington State Liquor and Cannabis Board.

The owner of the cannabis operation shall provide a valid license issued by Washington State Liquor and Cannabis Board. At no time shall the cannabis operation operate without a valid license. (Ord. 2016-4 § 1 (Att. A), 2016).

17A.290.060 Other permits.

All other required permits must be obtained and maintained in good standing throughout the duration of the project. Associated permits may include but are not limited to building permits, shoreline permits, floodplain development permits, zoning or critical areas permits, access permits, etc. (Ord. 2016-4 § 1 (Att. A), 2016).

17A.290.070 Industrial Hemp

Industrial Hemp must be located at least 10 miles from the nearest pre-existing 502 production operation. Likewise, a 502 production operation may not locate within 10 miles of an existing industrial hemp farm.

17A.290.080 Legal preexisting cannabis operations.

Legally established cannabis operations in existence prior to the adoption date of this code are considered legal preexisting in accordance with Chapter 17A.330 OCC. (Ord. 2016-4 § 1 (Att. A), 2016).

17A.290.090 Right to Entry

All cannabis producers and processors will allow inspection of the site and facilities by Okanogan County personnel including law enforcement for compliance with all applicable state and local permits and licenses at any time during regular business hours without prior notice.

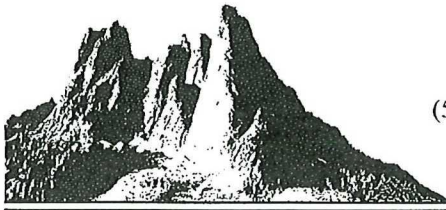
17A.290.100 Enforcement

In the event that the Administrator determines that a cannabis operation is not in compliance with the provisions of this section, the owner of such business shall be subject to the enforcement provisions of Chapter 17A.360 OCC. (Ord. 2016-4§ 1 (Att. A), 2016).

DISTRICT USE CHART - AMENDED

ATTACHMENT B

	Minimum Requirement (MR)	Rural 1 (R1)	Rural 5 (R5)	Rural 20 (R20)	Agricultural (AG)	Suburban Residential (SR)	Commercial (C)	Industrial (IN)	Agricultural Residential (AR)	Methow Review District (MRD)	Airport Development (AD)	Urban Residential (UR)	Neighborhood Use (NU)	Neighborhood Commercial (NC)	Special Review Commercial (SRC)	Rural Residential (RR)	Low Density Residential (LDR)
C - CONDITIONAL USE PERMIT																	
Production Facility _{B, 9} - Outdoor		C	C	C	C		C	C		C						C	C
Production Facility _{B, 9} - Indoor		C	C	C	C		C	C		C				C		C	C
Processing Facility _{B, 9}		C	C	C	C	C	C	C		C				C		C	C
Retail Stores _{B, 9}		C	C	C	C	C	C	C		C				C		C	C



OKANOGAN COUNTY
OFFICE OF PLANNING AND DEVELOPMENT

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Findings of Fact:

1. The purpose of the proposed amendment to Okanogan County Code, 17A.290 Cannabis Operations and OCC 17A.220 is to implement the goals and policies of the 2022 Comprehensive Plan and address issues within the current framework of OCC. The proposed new code accomplishes that task and in an environmentally responsible manner reflecting the probable development of cannabis operations in the county under the regulations adopted and official controls implementing that code as development occurs.
2. On August 24, 2021 the Board of County Commissioners enacted Ordinance 2021-9 placing a moratorium on all new cannabis operations and the expansion of existing cannabis operations.
3. On February 8, 2022 the BOCC repealed Ordinance 2021-9 and adopted Ordinance 2022-2 extending the moratorium along with setting terms, a work plan, and adopting findings of fact.
4. To date, the Planning staff has met with all but 4 cannabis operators and have addressed compliance on 138 cannabis operations and 68 parcels with existing cannabis operations in Okanogan County.
5. The Planning staff met with the Washington State Liquor and Cannabis Committee on April 7, 2022.
6. On May 23, 2022 the Planning staff met with the Planning Commission to go over proposed and suggested changes to OCC 17A.290 and OCC 17A.220.
7. The proposed code amendment was noticed for public comment from July 13, 2022 to August 22, 2022.
8. The SEPA responsible official issued a Determination of Significance and published notice of the determination on July 13 & 14, 2022.
9. The final notice of DNS was published on August 10 & 11, 2022 and August 17 & 18, 2022 in the official news of record for Okanogan County, the Okanogan Valley Gazette.
10. Notice of public hearing was published in the official news of record (Okanogan Valley Gazette) on August 10 & 11, 2022 and August 17 & 18, 2022.

11. A public hearing was held with the Planning Commission to take public testimony and review written testimony received on the proposed code amendment to OCC 17A.290 and OCC 17A.220 on August 22, 2022.
12. The Planning Commission finished deliberations and directed staff to transmit the proposed code amendment to OCC 17A.290 and OCC 17A.220 along with their recommendation to support the recommendation of the Planning department shown in the staff report to the Board of County Commissioners on August 22, 2022.
13. A public meeting was held by the Board of County Commissioners during their regular agenda on August 29, 2022 at 11 a.m. to adopt the code amendments proposed under OCC 17A.290 and OCC 17A.220 in the Commissioners Hearing Room.

Conclusions of Law:

1. The Board of County Commissioners is authorized in accordance with RCW 36.32.120 and RCW 36.70. 010 to provide the authority for, and the procedures to be followed in, guiding and regulating the physical development of a county or region through correlating both public and private projects and coordinating their execution with respect to all subject matters utilized in developing and servicing land, all to the end of assuring the highest standards of environment for living, and the operation of commerce, industry, agriculture and recreation, and assuring maximum economies and conserving the highest degree of public health, safety, morals and welfare.
2. The proposed amendment to Okanogan County Code 17A.290 Cannabis Operations is consistent with and implements the Goals and policies of the 2021 Comprehensive plan in the best interests of the Citizens of Okanogan County.
3. The Board of County Commissioners adopts the facts, findings assumptions, and recommendations of the DNS as a proper framework to support the legislative determinations set forth in the Okanogan County Code 17A.290, Cannabis Operations adopted by the Board of County Commissioners.
4. The Okanogan County Planning Commission reviewed the proposed revisions to OCC 17A.290, Cannabis Operations. After a properly noticed public hearing held of August 22, 2022 the Planning Commission recommended non-significant amendments to OCC 17A.290, Cannabis Operations and directed staff to transmit the record of their proceedings and the proposed amendments to OCC 17A.290 Cannabis Operations with a recommendation to the Board of County Commissioners to adopt as amended and implement an Annual Registration fee.
5. The Board of County Commissioners reviewed the proposed code amendment to OCC 17A.290 Cannabis Operations with the recommendation by the Planning Commission. A public meeting was scheduled for August 29, 2022 at which the Okanogan County Board of County Commissioners reviewed all submitted materials and approved the recommendation of the Planning Commission to adopt the amendments to OCC 17A.290 Cannabis Operations.