



Planning Commission Meeting:

First Wednesday of every Month @ 6:00pm

Planning & Community Development Department

1812 Main Street
Lake Stevens, WA 98258
(425) 622-9430

www.lakestevenswa.gov

Municipal Code

Available online:

www.codepublishing.com/WA/LakeStevens/

*Items attached

**Items previously distributed

Items to be distributed

PLANNING COMMISSION AGENDA

Regular Meeting Date: 05/05/2021

BY REMOTE PARTICIPATION ONLY

JOIN HERE <https://us02web.zoom.us/j/87311973371>

Meeting ID: 858 9471 5164 +1 253 215 8782 US (Tacoma)

- **CALL TO ORDER 6:00pm**
Pledge of Allegiance
- **ROLL CALL**
-
- **GUEST BUSINESS**
- **ACTION ITEMS**
 1. Approve minutes for 04/21/2021
- **PUBLIC HEARING- Proposed Amendments to LSMC 14.44.097 (Marijuana Facilities)**
Planning Manager Levitan
-

Public hearing presentation will follow the public hearing format listed below:

PUBLIC HEARING FORMAT

1. PC Chair Opens Public Hearing
2. Staff Presentation
3. Commission's questions for staff
4. Proponent's comments
5. Comments from the audience
6. Proponent rebuttal comments
7. Close public comments portion of hearing by motion
8. Re-open public comment portion of hearing for additional comments (optional)
9. Close Hearing by motion
10. **COMMISSION ACTION BY MOTION—Recommendation to Council**
 - A. Approve
 - B. Deny
 - C. Continue

DISCUSSION ITEM

1. Briefing : Lot Status Determination

Associate Planner Gassaway

COMMISSIONER REPORTS

PLANNING DIRECTOR'S REPORT

ADJOURN

SPECIAL NEEDS

The City of Lake Stevens strives to provide accessible opportunities for individuals with disabilities. Please contact City of Lake Stevens ADA Coordinator, at (425) 622-9419 at least five business days prior to any City meeting or event if any accommodations are needed. For TDD users, please use the state's toll-free relay service.

PLANNING COMMISSION REGULAR MEETING MINUTES

Remote Participation

Wednesday, April 21, 2021

CALL TO ORDER: 6:00 pm by Chair Jennifer Davis

MEMBERS PRESENT: Janice Huxford, Vicki Oslund, Jennifer Davis, Linda Hoult,, Todd Welch and Mike Duerr

MEMBERS ABSENT: None

STAFF PRESENT: Community Development Director Russ Wright, Senior Planner Dave Levitan, Associate Planner Sabrina Gassaway, Assistant Planner Needham and Clerk Jennie Fenrich

OTHERS PRESENT: Councilmembers Gary Petershagen

Vice Chair Welch called the meeting to order at 6:00 p.m. and led the Pledge of Allegiance.

Roll Call: All present except Chair Cronin, whose absence was excused (6-0-0-0)

Guest business: None

Approval of Minutes: Motion by Commissioner Hoult, seconded by Commissioner Duerr, to approve the minutes for April 7, 2021 meeting. (6-0-0-0).

Public Hearing-Adoption of SEPA Flexible Thresholds

Vice Chair Welch opened the public hearing for LUA2021-0033, an amendment to LSCM 16.04.050 to adopt State Environmental Policy Act (SEPA) flexible thresholds for minor new construction. Senior Planner Levitan provided a brief presentation on the previous Commission/Council discussions of the topic, the proposed thresholds, and the project findings. One person - Dylan Sluder with the Master Builders Association of King and Snohomish Counties - provided testimony during the public comment period. Mr. Sluder expressed his organization's support for the adoption of flexible thresholds but requested that the Commission make a recommendation to Council to adopt the maximum thresholds for single family residential (30 units) and multifamily residential (60 units). In response to questions from several commissioners, Senior Planner Levitan explained why staff was not proposing the adoption of the maximum thresholds for residential development.

Vice Chair Welch made a motion to recommend Council adoption of the flexible thresholds proposed in LUA2021-0033, but with the maximum thresholds for single family and multifamily residential developments. There was no second to the motion. Commissioner Duerr made a motion to recommend Council adoption of LUA2021-0033 as proposed by staff. Commissioner Davis seconded, and the motion passed 6-0-0 (Cronin absent).

Discussion Items:

Assistant Planner Needham gave a briefing on the update to the Permissible Use Table (LSMC Table 14.40-I) and associated LSMC sections. She shared an updated version of the Permissible Uses preamble (LSMC 14.40.010-090), which covers topics such as permissible and prohibited uses, accessory uses, and the format and structure of the use tables, as well as several examples of updated language in the Supplementary Use Regulations (LSMC 14.44). Assistant Planner Needham noted that the scope of the project had expanded from the original proposal to focus on updating the use tables, and asked if commissioners were comfortable with the project timeline pushing out a few months so that staff could make additional amendments. There was consensus among commissioners that it was best to be thorough and deliberate.

Associate Planner Gassaway presented an update on a code amendment to add a new LSMC section (14.16C.078) related to determinations of lot status. She indicated that staff had revised the proposed code language to incorporate language from several other municipal codes in Washington and to reference relevant Washington State Attorney General Opinions. Associate Planner Gassaway noted that the draft code language was currently being reviewed by the City Attorney, and asked commissioners if they were ready to move forward to a public hearing following the legal review. Commissioner Huxford requested that the proposed amendment be brought back for one more work session, so that Chair Cronin could provide feedback. Staff agreed to bring a revised version of the code language back at the Commission's May 5 meeting.

Commissioner Reports: None

Director's Report: Director Wright had no report but offered to answer any questions from the Commission.

MOTION TO ADJOURN: Moved by Commissioner Hoult, seconded by Commissioner Huxford to adjourn the meeting at 7:09 p.m. The motion carried (6-0-0-0).

Jennie Fenrich, Planning Commission Clerk



Staff Report Lake Stevens Planning Commission Planning Commission Public Hearing

Date: **May 5, 2021**

**Subject: Public Hearing for Prosed Amendments to LSCM 14.44.097, Marijuana Facilities
(LUA2020-0189)**

Contact Person/Department: David Levitan, Planning Manager

SUMMARY:

In December 2020, the city received a proposal for a citizen-initiated land use code amendment (LUA2020-0189) to LSCM 14.44.097 (Marijuana Facilities) to allow a reduced buffer of 225 feet between marijuana processing facilities and child care centers when certain conditions are met. However, the applicant recently informed staff that they are no longer requesting the reduced buffer for child care centers, as family day care providers are not considered child care centers and as such are not subject to the standard 1,000 foot buffer. In response to the applicant's request and to ensure consistency with state law, staff has narrowed the scope of recommended code amendments to focus on differentiating between child care centers and family day care providers. Staff has also prepared optional amendments to LSCM 14.44.097 should the Planning Commission wish to recommend any of the code amendments that were discussed at previous work sessions, including a new buffer between marijuana facilities and family day care providers or the adoption of a citywide limit on marijuana processing facilities.

ACTION REQUESTED OF PLANNING COMMISSION:

Planning Commission is asked to hold a public hearing and forward a recommendation to City Council on the proposed amendments to LSCM 14.44.097 shown in Attachment 2. Should commissioners wish to include any of the optional amendments in Attachment 3, staff is recommending that the chair continue the public hearing to May 19 before taking action.

BACKGROUND

In November 2012, Washington voters approved Initiative 502, which decriminalized the production, manufacturing, processing, packaging, delivery, distribution, sale or possession of marijuana for recreational use. State regulations for marijuana facilities were subsequently created under Chapter 69.50 of the Revised Code of Washington (RCW). [RCW 69.50.331](#)(8) requires licensed marijuana producers, processors and retailers to be located at least 1,000 feet away from, measured as the shortest straight line distance from the property line of the proposed marijuana facility to the property line of the second property, the following protected uses:

- Elementary or secondary school
- Playground
- Recreation center or facility
- Child care center
- Public park
- Public transit center
- Library
- Game arcade (where admission is not restricted to persons age 21 or older)



One Community Around the Lake

In February 2014, the City Council adopted [Ordinance 908](#), which established city regulations for marijuana facilities as codified in Lake Stevens Municipal Code (LSMC) [Section 14.44.097](#). The regulations were further amended in May 2016 via [Ordinance 958](#). Marijuana facilities are only permitted in the city's Light Industrial (LI) and General Industrial (GI) zoning districts, and require an administrative conditional use permitting for production and processing.

ORIGINAL PROPOSAL

On December 7, 2020, the city received a citizen-initiated land use code amendment application (LUA2020-0189) to revise portions of LSMC 14.44.097 (Marijuana Facilities). The applicant's original proposal was to reduce the required buffer between marijuana processing facilities and child care centers from 1000 feet to 225 feet so long as the distance between the facilities via the most direct publicly accessible route remains at least 1,000 feet (Attachment 1). LSMC 14.44.097 currently includes the standard 1,000-foot buffer for all protected uses identified above. RCW 69.50.331(8)(b) allows cities to reduce buffers between marijuana facilities and child care centers to a minimum of 100 feet with the adoption of a local ordinance.

The Planning Commission held work sessions on [January 6](#), [January 20](#), [February 3](#) and [April 7](#), 2021 to discuss the proposed code amendment. Early concerns voiced by commissioners included existing odor issues from current marijuana facilities in the Hartford Industrial Area and the potential impacts to children that could result from a reduced buffer. The applicant provided supporting material that noted that processing facilities do not generate odors in the same manner that production facilities (grow operations) do and noted that LSMC 14.44.097 has existing standards related to odor. The applicant's representative also provided documentation on how their proposed processing facility would address odor control and illustrated that the distance between their proposed facility and the closest child care facility far exceeded 1,000 feet when measured via the most direct path along public rights-of-way.

The City Council held a work session on the proposed amendment on [March 30](#), 2021. While not directly related to this proposal, the meeting also included a discussion of a potential licensing fee for marijuana production and processing facilities that could be used to help mitigate the impacts of marijuana businesses on the surrounding community, fund a full-time code enforcement officer (to investigate odor complaints and other issues), and fund infrastructure improvements in the industrial area to help diversify business types. Mayor Gailey is currently working with city staff on refinements to the licensing fee program, which will require Council adoption of a separate ordinance.

Councilmembers were generally supportive of the proposed buffer reduction, especially when considering the potential to utilize a licensing fee to help address noncompliance with the existing odor performance standards in LSMC 14.44.097. Councilmembers asked about the possibility of implementing a cap on marijuana processing facilities, which are currently exempt from the 70,000-sf cap on marijuana production facilities established in LSMC 14.44.097(f)(2). The city previously had a combined cap of 100,000 sf that applied to both processing and production facilities, but that was amended by Ordinance 958 to remove the cap on processing facilities, and instead implement a 70,000-sf limit on just production facilities.

REVISED PROPOSAL AND STAFF RECOMMENDATION

On April 26, the applicant's representative submitted a letter (Attachment 1) noting that in 2018 the state adopted different definitions for "child care centers" and "family day care providers" in RCW 43.216.010, and that the 1,000 foot buffer in RCW 69.50.331(8) does not apply to family day care providers. Attachment 1 also includes a letter from the Washington State Liquor and Cannabis Board (WSLCB) noting that the applicant's license for a processing facility was approved on April 21, 2021; the license had originally been declined by WSLCB due to its proximity to a family day care provider, which was the impetus for the proposed code amendment. City staff contacted WSLCB, who confirmed that buffers are not required between marijuana facilities and family day care providers but that cities can adopt local regulations establishing a buffer between the two uses. WSLCB staff was not sure why the applicant's original license application was denied based on the presence of the nearby family day care provider.

While the state has already approved the applicant's proposed processing facility that was the original reason for the proposed code amendment, the applicant supports amendments to LSMC 14.44.097 (Marijuana Facilities) and LSMC 14.08.010 (Definitions of Basic Terms) to differentiate between child care centers and family day care providers. Staff is also recommending that LSMC 14.44.097 include a reference to the proposed marijuana licensing fee, should it be codified in LSMC 4.80.030. The proposed code amendments shown in Attachment 2 now:

1. Amends LSMC 14.08.010 (Definitions of Basic Terms) to add a definition for family day care provider (specifically as it relates to marijuana facilities), update the definition of child care center (specifically as it relates to marijuana facilities), and remove references to child care centers in two related definitions (commercial day care center and in-home day care).
2. Updates the references to state law in LSMC 14.44.097(d)
3. Adds LSMC 14.44.097(m) to reference the licensing fee for marijuana producers and processors.

OPTIONAL AMENDMENTS TO CONSIDER

As previously noted, cities do have the discretion to adopt local regulations for uses beyond the protected uses listed in RCW 69.50.331(8), including new buffers between marijuana facilities and family day care providers and the adoption of a citywide limit on marijuana processing facilities. As such, Attachment 3 includes optional amendments to LSMC 14.44.097(e) and (f), including:

1. Establishing a new 1,000-foot buffer between family day care providers and marijuana facilities
2. Allowing for the buffer between family day care providers and standalone marijuana processing facilities to be reduced to 225 feet, when certain conditions are met
3. Clarifying the types of businesses that are currently subject to the citywide 70,000 sf limit on production facilities
4. Establishing a new 30,000 sf citywide limit on processing facilities.

Previous iterations of all four of these items were discussed during Commission work sessions, before it was determined that the child care centers referenced in RCW 69.50.331(8) do not apply to family day care providers. As the applicant is no longer proposing any amendments to the buffer requirements, staff's recommendation is focused on clarifying the difference between child care centers and family day care providers and does not include any of the amendments in Attachment 3. However, if commissioners believe that such amendments are needed, their recommendation to Council can incorporate any of the items in Attachment 3, as well as any additional language they feel is warranted. Because the optional amendment in LSMC 14.44.097(e)(5) would represent new buffer requirements that don't currently exist, staff would recommend holding the public hearing open until May 19 to allow for additional public comment if it wants to recommend inclusion of that provision.

FINDINGS AND CONCLUSIONS

Per [LSMC 14.16C.075](#)(f), the City Council shall make the following findings when approving land use code amendments:

1. The amendment is consistent with the Lake Stevens Comprehensive Plan

- Land Use Element Policy 2.6.3 (*under Hartford Road Industrial District goal*) – Review development regulations to ensure that impacts are kept to a minimum, especially those that affect adjoining, non-industrially zoned areas.
- Economic Development Element Policy 6.4.1 – Develop zoning for employment/business areas that is flexible to support employment growth and large employers.

Conclusions – Adoption of the staff-recommended amendment is consistent with the goals and policies of the city's Comprehensive Plan. Adoption of the optional buffer for family day care providers would provide additional but flexible protections between marijuana processing facilities and family day care providers that don't currently exist. Existing land use code regulations in LSMC Title 14 implement the goals and policies of the Comprehensive Plan and ensure that there are adequate protections to mitigate concerns related to odor, noise, security and public safety.

2. The amendment is in compliance with the Growth Management Act (RCW 36.70A.106)

- Code amendments are subject to review by the Washington State Department of Commerce.
- The city provided a request for expedited review to the Department of Commerce on April 9, 2021 of its intent to amend LSMC 14.44.097, with a proposed adoption date of May 25, 2021. The Department of Commerce granted expedited review of the proposed amendment on April 26, 2021.
- If approved by the City Council, staff will file the final ordinance with the Department of Commerce within 10 days of its adoption.

Conclusions – The proposed code amendment has met all Growth Management Act requirements.

3. The amendment serves to enhance the public health, safety and welfare

Conclusions – The recommended amendments would provide additional clarity to the code, most notably on the difference between child care centers and family day care providers. The optional amendments include a new 200-foot buffer between marijuana processing facilities and family day care providers measured "as the crow flies", while requiring the minimum distance via public rights-of-way beat least 1,000 feet to ensure adequate separation between the two uses. The applicant has demonstrated that marijuana processing facilities do not generate odors in the same manner that marijuana production facilities do, and Title 14 provides adequate measures to address potential impacts. The optional 30,000-sf limit on standalone marijuana processing facilities, with a sunset date of December 31, 2023, would provide the city with an interim period to evaluate whether additional regulations are necessary.

Public Notice and Comments

- Land use code amendments are reviewed through the city's Type VI legislative review process identified in [LSMC 14.16B.605-660](#), which requires the Planning Commission to hold a public hearing and make a recommendation to City Council.

- The city published a joint Notice of Public Hearing and SEPA Threshold Determination in the Everett Herald on April 16 and April 23, 2021. The notice was also posted at City Hall and on the [city's website](#) on or around April 16, 2021.
- No public comments have been received to date, beyond those received by the applicant (Attachment 2). If comments are received prior to the hearing, the comments will be distributed on the night of the hearing.

Conclusions – The city has met all public notice requirements per Chapter 14.16B LSMC.

State Environmental Policy Act (SEPA) (Chapter 97-11 WAC and Title 16 LSMC)

- The applicant prepared a SEPA Environmental Checklist on December 1, 2020, which staff reviewed and supplemented on April 9, 2021.
- The city issued a [Determination of Nonsignificance](#) (DNS) on April 16, 2021, which was sent to the Department of Ecology, affected tribes, and agencies with expertise. Notice of the DNS was issued jointly with the Notice of Public Hearing. The deadline for public comments is April 30, 2021.
- As of April 29, no comments or appeals from agencies or the public have been received on the SEPA determination.

Conclusions – The proposed code amendment has met all local and state SEPA requirements.

RECOMMENDATION: Staff recommends that Planning Commission forward a recommendation to City Council to APPROVE the proposed amendments to LSMC 14.44.097 (LUA2020-0189), as shown in Attachment 2. Should the Commission wish to include any of the optional amendments in Attachment 3, staff is recommending that the chair continue the public hearing until May 19, 2021. City Council is tentatively scheduled to hold their public hearing for LUA 2020-0189 on May 25, 2021.

ATTACHMENTS

Attachment 1 – April 26, 2021 Letter from Applicant's Representative

Attachment 2 – Recommended Amendments to LSMC 14.44.097 and 14.08.010

Attachment 3 – Optional Amendments to LSMC 14.44.097



April 26, 2021

Planning Commission
C/O Mr. Dave Levitan
City of Lake Stevens
1812 Main Street
Lake Stevens, WA 98258

LAND USE CODE AMENDMENT TO 14.4.097 – MARIJUANA FACILITIES

Dear Commissioners:

The land use code amendment proposed on behalf of our Client was the result of having received notice from the Liquor and Cannabis Board (LCB) that its use would not be allowed at the Hartford location because it would be within 1,000 feet of a child care center. Subsequently, the LCB determined we would be in compliance as we are not within 1,000 feet of a restricted child care entity as outlined in RCW 69.50.331(8)(a) – (d), because the facilities near our Client are Family Day Care Providers and not Child Care Centers. Attached please find our Client's Certificate of Location Compliance for 12710 31st PL NE, Lake Stevens, WA 98258, which certificate was issued by the Washington Liquor and Cannabis Board (LCB) on April 21, 2021.

In sum, our client's location, while within 1,000 feet of a "Family Day Care Provider"¹ as defined by RCW 43.216.010(c), is not within 1,000 feet of a "Child Care Center"² as defined by RCW 43.216.010(a) to which the location restriction of 1,000 feet in RCW 69.50.331(8) applies³.

Citizen-Initiated Land Use Code Amendment

Based on the above, our Client does not believe an amendment to the buffers in LSCM 14.44.097 is necessary. However, our Client supports amendments to the definition for Child Care Center within LSCM 14.08.020 to ensure consistency with the definitions in state law resulting from WAC 170-295 being decodified by WSR 18-14-078 on July 1, 2018, recodified as WAC 110-300A-0010 on July 1, 2018, and then repealed by WSR 19-14-076 effective August 1, 2019.

We suggest these amendments match the definitions in RCW 43.216.010(a) and (c) to ensure consistency with RCW 69.50.331(8).

Thank you for your time and consideration.

Sincerely,

David Toyer
President

¹ "Family Day Care Provider" means a child care provider who regularly provides early childhood education and early learning services for not more than twelve children in the provider's home in the family living quarters. RCW 43.216.010(c)

² "Child Care Center" means an agency that regularly provides early childhood education and early learning services for a group of children for periods of less than twenty-four hours. RCW 43.216.010(a)

³ The licenses issued for Sheri LaChapelle and See Saw Daycare are for "Family Child Care Homes" while by comparison, Kid's Way Child Care, is a commercial facility licensed as a "Child Care Center."

Certificate of Location Compliance

Date: 4/21/2021

Emailed to: MICHAELCOOKMA@GMAIL.COM

MICHAEL LEE COOK
Trade Name: MICHAEL LEE COOK
License #: 431389 – 7P
UBI #: 6043912880010003

I have received and reviewed the proposed location address for a marijuana business license at:

12710 31ST PL NE LAKE STEVENS, WA 98258

Your application for the new proposed location for this application was received on 1/22/2021. On that date, the location address you provided appeared to meet the distance requirements from restricted entities (such as parks, schools, and playgrounds) as outlined at RCW 69.50.331(8)(a)-(d). This letter serves as a certificate of compliance for the proposed location and certifies there are no apparent restricted entities that would prevent this location from being approved. If a new restricted entity moves or is built too close to your location after the date of this certificate, that will not prevent you from receiving a license, provided you meet all other licensing requirements.

This certificate is not a license to produce, process, or sell marijuana at this proposed location. You need to meet all other marijuana licensing requirements to receive your license at this location.

It is important to note the following with regard to this certificate:

- If a disqualifying factor is found and existed prior to the date of this certificate (i.e., existing park or other restricted entity), it may prevent you from receiving your license or operating at this location;
- This certificate does not ensure compliance with local laws. You will need to check with your city or county for building permits, zoning, and other local area requirements; and
- This certificate is only valid for this application and location address. If your application is withdrawn, this certificate is no longer valid.

If you have any questions, please feel free to contact me.

Thank you,

Douglas Gibb
Marijuana Licensing Specialist
(360) 664-1605
Douglas.gibb@lcb.wa.gov

14.44.097 Marijuana Facilities.

Marijuana facilities shall meet the following development standards:

- (a) All facilities must be State-licensed and comply with all requirements of State law and the Washington State Liquor and Cannabis Board's regulations for State-licensed marijuana facilities.
- (b) No marijuana facility shall be allowed as a home occupation.
- (c) No marijuana cooperative is allowed.
- (d) In the event of any inconsistency between this section and the definitions in State law, the definitions set forth in RCW [69.50.101](#) to [69.50.102](#), WAC [314-55-010](#), [RCW 43.216.010](#) and Section [14.08.010](#) shall control.
- (e) Location.
 - (1) Marijuana retailers and marijuana processing facilities shall be located within a permanent structure designed to comply with the City building code and constructed under a building/tenant improvement permit from the City regardless of the size or configuration of the structure.
 - (2) A marijuana production facility shall be located within a fully enclosed secure indoor facility or greenhouse with rigid walls, a roof and doors designed to comply with the City building code and constructed under a building/tenant improvement permit from the City regardless of the size or configuration of the structure.
 - (3) Marijuana facilities shall not be located in mobile or temporary structures.
 - (4) No State-licensed marijuana facility shall be located within 1,000 feet of the perimeter of a parcel which has at least one of the land uses listed below:
 - (i) Elementary or secondary school (public or private);
 - (ii) Playground;
 - (iii) Recreation center or facility;
 - (iv) Child care center ([does not include family day care providers](#));
 - (v) Public park;

- (vi) Public transit center;
- (vii) Library;
- (viii) Any game arcade which allows admissions to persons less than 21 years of age.

(f) Size and Number.

- (1) State-licensed marijuana producers will be limited in size to Tier 2 production facilities, pursuant to WAC [314-55-075](#).
- (2) The maximum amount of space allotted for State-licensed marijuana production will be limited to 70,000 square feet Citywide.
- (3) A marijuana retailer will be limited in size to 1,000 total square feet or less including sales, storage, office and other incidental spaces.
- (4) The total number of marijuana retailers shall be one.

(g) No production, processing or delivery of marijuana may be visible to the public nor may it be visible through windows.

(h) 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 a sanitary sewer or stormwater sewer system nor be released into the atmosphere outside of the structure where the facility is located.

(i) No odors shall be allowed to migrate beyond the interior portion of the structure where a marijuana facility is located. Applicants must demonstrate that adequate odor control exists on site prior to certificate of occupancy.

(j) A City of Lake Stevens business license pursuant to Chapter [4.04](#) and a State license pursuant to Chapter [314-55](#) WAC shall be obtained prior to the start of facility operations.

(k) All marijuana facilities shall comply with Chapter [19.27](#) RCW, State Building Code Act and Chapter [14.80](#), Building and Construction. Appropriate permits shall be obtained for all changes of use, tenant improvements, mechanical system improvements, electrical upgrades and similar work.

(l) A State-licensed marijuana retail facility may have one sign, limited to 1,600 square inches (11.11 square feet), identifying the retail outlet by the licensee's business name or trade name, affixed or

hanging in the windows or on the outside of the premises visible to the general public from the public right-of-way, subject to issuance of a sign permit pursuant to Chapter [14.68](#). (Ord. 958, Sec. 4, 2016; Ord. 908, Sec. 8, 2014)

(m) State-licensed marijuana producers and processors shall be subject to the licensing fee established in LSMC 4.80.030.

14.08.010 - Definitions

Child Care Center (for purposes of administering [14.44.097](#), Marijuana Facilities): an agency that regularly provides early childhood education and early learning services for a group of children for periods of less than twenty-four hours. See [RCW 43.216.010\(a\)](#).

Family Day Care Provider (for purposes of administering [14.44.097](#), Marijuana Facilities): a child care provider who regularly provides early childhood education and early learning services for not more than twelve children in the provider's home in the family living quarters. See [RCW 43.216.010\(c\)](#).

~~Child Care Center (definition related to recreational marijuana facilities regulations only). An entity that regularly provides child day care and early learning services for a group of children for periods of less than 24 hours licensed by the Washington State Department of Early Learning under Chapter 170-295 WAC. Child care centers include "Commercial Day Care Center" and "In-Home Day Care" entities.~~

Day Care Center, Commercial. Any child care arrangement that provides day care on a regular basis for more than 12 children of whom at least one is unrelated to the provider. ~~See *Child Care Center*.~~

Day Care, In-Home. Any child care arrangement that provides day care on a regular basis for less than 12 children of whom at least one is unrelated to the provider. ~~See *Child Care Center*.~~

14.44.097 Marijuana Facilities.

(e) Location.

5) Unless otherwise provided herein, no State-licensed marijuana facility shall be located

within 1,000 feet of the perimeter of a parcel which has the following use:

(i) Family Day Care Provider (see definition in LSMC 14.08.010)

(6) A standalone marijuana processing facility may be located within 1,000 feet of the perimeter of a parcel which has a family day care provider subject to the following conditions:

(i) The standalone marijuana processing facility is located at least 200 feet from the perimeter of the parcel having a family day care provider; and

(ii) The standalone marijuana processing facility is not located within 1,000 feet from the main entrance to family day care provider as measured by the most direct route over and across established public sidewalks or public streets; and

(iii) The standalone marijuana processing facility has no retail or production operation.

(f) Size and Number.

(1) State-licensed marijuana producers will be limited in size to Tier 2 production facilities, pursuant to WAC [314-55-075](#).

(2) The maximum amount of space allotted for State-licensed marijuana production will be limited to 70,000 square feet Citywide. This limit applies to businesses that are licensed by the state solely as producers as well as those that are licensed jointly as producers and processors. For jointly licensed businesses, all floor area utilized for production or processing shall count towards the 70,000 square foot limit.

(3) The maximum amount of space allotted for standalone state-licensed marijuana processing will be limited to 30,000 square feet Citywide. This limit applies to businesses that are licensed by the state solely as processors and does not apply to processors that also have a state license for marijuana production. This limit shall automatically expire on December 31, 2023 if not amended prior to that date.

(43) A marijuana retailer will be limited in size to 1,000 total square feet or less including sales, storage, office and other incidental spaces.

(54) The total number of marijuana retailers shall be one.



Staff Report
City of Lake Stevens Planning Commission

Planning Commission Briefing
Date: **May 5, 2021**

SUBJECTS: Lot Status Code Amendment

CONTACT PERSON/DEPARTMENT: Sabrina Gassaway, *Associate Planner*

SUMMARY: Update on Proposed Lot Status Code Amendment (LUA2021-0001)

ACTION REQUESTED OF PLANNING COMMISSION: None required

Background

On [March 3](#), staff introduced the Commission to a proposed code amendment that would add a new section related to legal lot status to Chapter 14.16C LSMC, with a definition to be added to LSMC 14.08. Legal lots are parcels of land that were created pursuant to the zoning and subdivision requirements in place at the time of the lot creation. Since 1969, subdivisions in Washington state have been regulated by [Chapter 58.17 RCW](#), which provides state regulations for the process and recording of subdivisions and other methods of land division and is implemented at the local level through adoption of a subdivision ordinance.

Over the last fifty years, the Washington State Office of the Attorney General (AGO) has issued a number of legal opinions that found that local jurisdictions have the right to make lot status determinations on lots that were created prior to the adoption of RCW 58.17. Since 1989, Lake Stevens lot status determinations have been evaluated through a series of administrative policies. However, the review process lacks a codified framework and decision criteria on which these determinations are made or an avenue for appeal. For this reason, staff is proposing a Land Use Code amendment.

Draft Code Amendment

On [April 21](#) staff presented the code amendment draft to the commission. Commissioners were generally comfortable with the language, and directed staff to bring the amendment back for a final work session after it had been reviewed by the City Attorney. The City Attorney has now reviewed the draft code amendment, resulting in minor changes that are included in Attachment 1. As written, the amendment includes:

- Applicability Criteria (Establishing situations where a Lot Status Determination is required)
- Listed required submittal materials
- Decision Criteria
- Method for appeal

Staff would continue to process lot status determinations through a Type I land use application when no associated permit is being requested, with approval by the Community Development Director. The proposed code also gives staff the ability to issue a lot status determination concurrently with a building or land use permit, without requiring a separate Type I land use application. While researching other lot status codes, staff found examples of alternative methods for determining lot status and have included

them in the proposed code. These alternatives provide relief in situations where properties were divided through tax segregation, deed, or fee simple transfer purchase but the lot in question meets the minimum zoning standards per Title 14.

Next Steps

Staff has submitted the amendment to the Department of Commerce for their 60-day review, and staff will be preparing a SEPA Environmental Checklist and issued a SEPA Threshold Determination prior to the public hearing. Staff would like feedback on the proposed code language, and if the commission has no objections, staff will schedule a public hearing for the amendment.

Attachments:

- 1) Draft Lot Status Code with City Attorney Input

Chapter 14.16C

LAND USE ACTIONS, PERMITS AND DETERMINATIONS - DECISION CRITERIA AND STANDARDS

Sections:

- [14.16C.005 Purpose](#)
- [14.16C.010 Scope](#)
- [14.16C.015 Administrative Conditional Uses](#)
- [14.16C.020 Repealed](#)
- [14.16C.025 Administrative Modifications](#)
- [14.16C.030 Changes of Use](#)
- [14.16C.035 Code Interpretations](#)
- [14.16C.040 Comprehensive Plan Amendments - Text and Maps](#)
- [14.16C.045 Conditional Uses](#)
- [14.16C.050 Design Review](#)
- [14.16C.055 Development Agreements](#)
- [14.16C.060 Essential Public Facilities](#)
- [14.16C.065 Events](#)
- [14.16C.070 Home Occupations](#)
- [14.16C.075 Land Use Code Amendments](#)
- [14.16C.078 Legal Lot Status Determination](#)
- [14.16C.080 Planned Neighborhood Developments](#)
- [14.16C.083 Planned Action Projects](#)
- [14.16C.085 Reasonable Use Exceptions](#)
- [14.16C.090 Rezones - Official Zoning Map Amendments](#)
- [14.16C.095 Right-of-Way Vacation](#)
- [14.16C.100 Shoreline Permits](#)
- [14.16C.105 Site Plan Review](#)
- [14.16C.110 Temporary Use](#)
- [14.16C.115 Variances](#)
- [14.16C.120 Administrative Authority](#)

14.08 Definitions

"Lot of record" means: (1) Lots created through a subdivision or short subdivision and recorded with Snohomish County after 1969 (not all short plats were required to be recorded before 1974); (2) land for which a deed or other instrument describing the land was recorded with Snohomish County prior to 1969; (3) lots created per RCW 58.17.040 or (4) land that receives a lot status determination by the city or previous lot status determination from Snohomish County.

"Lot Status Determination" means an administrative review process to determine if a lot was legally created and is eligible for conveyance and/or whether the lot is eligible to be considered for development permits.

14.16C.078 Lot Status Determination

(a) Purpose

- (1) The purpose of this section is to provide a process and criteria for determining whether a lot, tract, or parcel (parcels) is a lot of record consistent with applicable state and local law, and to provide alternate criteria for determining lot status for a parcel that may not qualify outright as a lot of record.

(b) Applicability and burden of proof.

- (1) The standards of this section apply to all requests for lot status determinations or for any applications relating to land development, building permits, property division, boundary line adjustment or any other land use actions when a lot status determination is necessary pursuant to RCW 58.17.210.
- (2) The applicant shall bear the burden of proving that a parcel of land is a lot of record.

(c) Determination Process

- (1) Lot status determinations as part of a building permit or other land use and development request.
 - (i) Building permit or land use and other development applications on parcels not part of a platted land division prior to 1969 shall be reviewed for compliance with the criteria in this section.
 - (ii) Concurrent review with an underlying application shall follow the process for the underlying building permit or land use permit.
 - (iii) A separate written approval of a lot status determination will not be issued unless requested by the applicant.
- (2) Lot status determinations without a building permit or other land use and development request.
 - (i) Lot status determinations not involving any other concurrent city reviews shall submit all materials set forth in LSCM section 14.16C.078(d), a complete Type I application and current fee.
 - (ii) The lot status determination shall be reviewed for compliance with the criteria in this section.
 - (iii) The city will issue a written determination of lot status.

(d) Submittal Requirements

The following materials shall be provided by all applicants for a lot status determination:

- (1) Complete application (if not a concurrent review);
- (2) Written narrative explaining the purpose of the request;
- (3) Title Report (prepared within 30 days of submittal to the City);

- (4) Scaled site plan to include property lines, dimensions, structures, site improvements, easements and utility locations;
- (5) Any existing evidence of legal lot status such as:
 - (i) Prior approved and recorded short subdivision or subdivision approval showing formal lot creation;
 - (ii) Recorded deeds or contracts describing the lot or lots either individually or as part of a conjunctive legal description (e.g., Lot 1 and Lot 2); or
 - (iii) Historic tax records or other similar evidence, describing the parcel as an individual lot.
- (e) Decision Criteria. The Planning Director or designee shall determine that a parcel is a legal lot of record when the parcel meets one or more of the following criteria:
 - (1) The parcel was created through a subdivision or short subdivision in the city after June 17, 1970.
 - (2) The parcel was created through a subdivision or short subdivision recorded with Snohomish County or approved by Snohomish County prior to annexation and after August 9, 1969.
 - (3) The parcel was created through a subdivision or short subdivision with written approval by Snohomish County between 1937 and 1969 and has been subsequently developed, sold through deed transfer and meets the requirement of 14.16C.078(f)(3).
 - (4) The lot was created by a process defined in RCW 58.17.040 RCW.
- (f) Alternate decision criteria for determining lot status. The Planning Director or designee may determine that a parcel is a legal lot of record when the parcel meets one or more of the following criteria:
 - (1) The parcel was created through territorial platting prior to 1937 and not subsequently developed, altered or improved but the applicant can demonstrate that the parcel meets the requirement of LSCM section 14.16C.078(f)(3).
 - (2) The parcel is a tax parcels created for tax segregation purposes by the County Assessor and the applicant can demonstrate (i) that the parcel meets the requirement of LSCM section 14.16C.078(f)(3) and (ii) the following:
 - a. The parcel was created by a tax segregation process defined in Chapter 84.56 RCW prior to March 4, 1972; and
 - b. The parcel was defined by metes and bounds legal description or fractional section description and conveyed by notarized deed prior to August 9, 1969; and
 - c. The parcel was conveyed as an individually described parcel to separate, noncontiguous ownerships through a fee simple transfer or purchase.
 - (3) For consideration for an alternative determination of lot status, the applicant shall demonstrate that:
 - a. The parcel meets the zoning regulations in effect at the time the lot was created; or
 - b. The parcel substantially meets or can meet current zoning standards per Title 14 including but not limited to access to public utilities, site access, road, sidewalk, stormwater, lot size, setbacks, etc.; and
 - c. The parcel does not adversely impact public health or safety; and
 - d. The parcel does not adversely affect or interfere with the implementation of the comprehensive plan.

e. For purposes of reviewing the status of pre-existing parcels, parcels within 10 percent of lot size standards shall be considered to substantially meet the current standards unless the Director or designee determines that public health or safety impacts are present.

(g) Prior Determination.

- (1) Lots which have been recognized through a previous lot status determination, including approvals from Snohomish County before annexation, or other planning approval in which lot recognition is made, are lots of record. Such parcels shall remain lots of record unless the property owner consolidates or merges the lot with another lot or alters the lot or portions of a lot subject to a court decision. Any such change shall necessitate a new legal lot determination through the processes outlined in this LSCM section 14.16C.078.
- (2) The city shall have the authority to review lots that have been altered through the boundary line agreement process identified in RCW 58.04.007. If the city determines that the limited parameters of RCW 58.04.007 do not apply to a recorded boundary line agreement, the city's determination of lot status shall be based on the recorded boundaries prior to the agreement, unless a boundary line adjustment is approved through the process outlined in LSCM section 14.18.200.