



CANNABIS FARMERS COUNCIL

# CANNABIS & CLEAN AIR

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ANALYSIS OF DATA RELATED TO  
CANNABIS ODOR COMPLAINTS  
AND  
IMPACT OF PROPOSED CLEAN AIR  
REGULATIONS ON SMALL INDEPENDENT  
FARMERS OF SPOKANE COUNTY

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# EXECUTIVE SUMMARY

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### A. Focus of this Report

This report was drafted to provide the Spokane Clean Air Agency (“Agency”) further insight into the marijuana odor complaints received to date by the Agency and to underscore the significant impact the excessive fee schedule proposed will have on the small independent farmers of Spokane County.

### B. Methodology

This report includes data related to gross revenues generated by the local cannabis industry made publicly available by the Washington State Liquor and Cannabis Board (“WSLCB”) and analyzed by Straight Line Analytics. A Public Records Request was submitted to the Agency to gain a copy of the Excel spreadsheet used by the Agency to track marijuana-related odor complaints. The odor source addresses associated with licensed farms were then manually looked up, one by one, on Spokane County’s SCOUT map to identify parcel information, and the WSLCB License Application Spreadsheet to determine tier size and number of farms per parcel. Type of cultivation was identified by speaking directly with the farmers and/or viewing the farm locations on Google Earth satellite images.

Specifically we sought to identify:

- Zoning classification of the farm (i.e. rural traditional, small tract agriculture, large tract agriculture, light industrial, manufacturing).
- Tier size of the farm (i.e. Tier 1, Tier 2, Tier 3).
- Number of farms located on the parcel.
- Size of the parcel.
- Type of cultivation operation (i.e. indoor or warehouse, outdoor using hoop house or greenhouse, outdoor & indoor combination, open field outdoor)

### C. Recommendations

We recommend that the Agency abandon its efforts to impose unduly burdensome fees on cannabis farmers in Spokane County. The proposed fees range up to 18.4% of some farmers’ FY 2016 gross revenue. This is far from reasonable and will devastate many businesses. We also find it disturbing that 74% of the farms in Spokane County have had zero complaints and that the vast majority (75%) of complaints are associated with only 3 farms which does not justify the adoption of these draconian regulations and severe fees impacting all cannabis farmers.

# CANNABIS FARMING OVERVIEW

A NEW INDUSTRY COMES TO RURAL WASHINGTON

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## FARMING CANNABIS IN SPOKANE

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Spokane County is uniquely poised to exercise its regulatory authority to protect and promote jobs in one of the fastest growing business sectors in both the county and the state.

The existing landscape of cannabis producers and processors in Spokane County consists of 136 small businesses and family farms actively reporting sales, many of whom have lived in Spokane their entire lives. They are made up of community-minded individuals who support other small local businesses, as well as local non-profits, and the arts. They employ a significant number of people in positions that pay a livable wage.

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## ABOUT MONOTERPENES

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The Agency states that cannabis releases volatile organic compounds (“VOC”), thus its cultivation should be subject to regulation by the Agency. The Agency’s own research identified that the most common VOCs emitted by cannabis were the following monoterpenes:

- **a-pinene**, also found in the oils of many species of coniferous trees including pine.
- **b-pinene**, also found in the oils of many species of coniferous trees including pine.
- **d-limonene**, also found in citrus fruits including oranges and lemons.
- **b-phellandrene**, also found in fennel and Canada balsam oil.
- **myrcene**, also found in hops.
- **b-ocimene**, also found in mint, parsley, basil, and orchids.

Yet none of these other plants nor their cultivation are presently regulated by the Agency.



All of these plants emit monoterpenes also associated with cannabis.

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## **CANNABIS FARMING IS AN AGRICULTURAL ACTIVITY**

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Washington L & I classifies marijuana farm employees as agriculture workers and the WSDA regulates the pesticides and fertilizers cannabis farmers can use. Cannabis is a plant and grows in the soil. The WSDA has also begun rulemaking for an “organic” certification program for cannabis similar to its other organic crop certification. Basing regulatory policies on a denial of the nature of the thing regulated is bad government pure and simple.

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## **CANNABIS PRODUCES OXYGEN**

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Cannabis is a plant and engages in photosynthesis.

Cannabis converts carbon dioxide to oxygen.

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## **DISCRIMINATORY TREATMENT OF OUTDOOR FARMERS**

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Governor Inslee has directed regulatory agencies to adopt regulations that consider carbon impact. Penalizing cannabis farmers for growing outdoors via increased fees is in direct conflict with this directive.

The State Clean Air Act reads “In selecting air pollution control strategies state and local agencies shall support those strategies that lessen the negative environmental impact of the project on all environmental media, including air, water, and land.” Not only do outdoor cannabis plants convert CO<sub>2</sub> to oxygen and deposit carbon into the soil, outdoor cultivation has a significantly smaller overall carbon footprint compared to indoor cultivation.

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## **CREATING CONFLICTING REGULATIONS**

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Requiring farmers to install significant amounts of odor-suppression equipment will make it challenging and in some cases impossible for marijuana farmers to comply with both the Agency rules and state energy codes.

Regulations that conflict with other regulations should be avoided as it’s unfair to the small businesses caught in the middle.

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## **RISKS TO FARMERS’ SAFETY**

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The proposed rule to require marijuana farmers to report individual harvest schedules puts the safety and security of marijuana farmers at risk. Because the Agency must comply with the Public Records Act, that information (which is otherwise proprietary to each farm) can be made available to the public and leveraged by competing farms and/or individuals seeking to rob or burglarize a farmer at the ideal time. This provision must be removed.

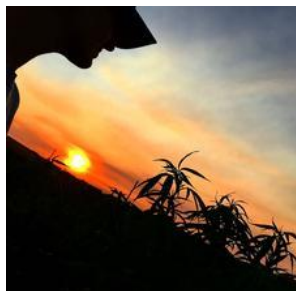
This invasion into the privacy of cannabis farmers cannot be justified on its face by any compelling county interest. Indeed, it seems to be an effort by the Agency to identify when it would be most lucrative to conduct “random” inspections of the farms, to generate additional revenue for the Agency via fines for violations. It is also an excessive administrative burden for both the farmer and the Agency

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## THE LIFE OF A SMALL CANNABIS FARMER

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- **Over-Regulated:** Cannabis farmers are over-regulated by the WSLCB, Spokane County, WSDA, SBCC, DOH, and other authorities. Large operators and lobbyists, as well as those opposed to cannabis, continue to push for increasingly complex and expensive regulations that challenge the viability of small independently owned cannabis farms in Washington State.
- **Fee Increases:** This year the cannabis farmers of Washington State were hit with a 48% increase in license fees to fund a replacement to the state traceability system. It was supposed to be delivered November 1<sup>st</sup> 2017 but has been delayed to no sooner than January 1<sup>st</sup> 2018. In its place an Excel spreadsheet-based contingency plan has been implemented. This disruption was visited on farmers during the height of the harvest season, and among its many imperfections it has forced approximately 25% of licensed farmers to resort to a manual process. (These same farmers are also now encountering retailers who refuse to buy their product because of doubts and administrative burdens related to this “contingency solution” of the WSLCB.)
- **Falling Wholesale Prices:** There is a significant imbalance in market power between the producers and retailers due to the structure of the market created by the state that placed a cap on the total of permitted stores, yet licensed an unlimited number of farmers. This has led to continually falling wholesale cannabis prices, pushing many small farms to the brink of insolvency.
- **Over-Taxed:** Cannabis farmers are significantly over-taxed, because a provision of the IRS tax code (Section 280-E) prevents them from taking standard business deductions such as marketing expenses.
- **Consolidation:** The WSLCB has recently begun allowing market consolidation via acquisition of existing businesses which is allowing only the biggest and most well-capitalized to grow even larger.



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## THE ECONOMICS OF EXCESSIVE FEES

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Assessing fees on all farms when most are not associated with any complaints is unreasonable.

The proposed fee schedule is unduly burdensome.

**It underscores the growing problem of over-regulation in America.**

The Agency’s proposed fees are as high as **18.3%** of the FY 2016 Median Farm Gross Revenue for Spokane farmers. See below chart for details.

Most Spokane County farmers will not be able to financially support these proposed fees. These fees will lead to loss of jobs in the cannabis industry, closure of farms, and loss of farmers’ livelihoods.

Spokane County Business Type	#	Median FY 2016 Gross Revenue*	Indoor Fee Y1	% of Gross Revenue	Outdoor Fee Y1	% of Gross Revenue	Indoor & Outdoor Fee Y1	% of Gross Revenue	“Exempt” Fee Y1	% of Gross Revenue
T2 P/P	55	\$93,414	\$1,924	<b>2.1%</b>	\$2,550	<b>2.7%</b>	\$3,210	<b>3.4%</b>	\$6,042	<b>6.5%</b>
T3 P/P	34	\$266,070	\$2,074	<b>0.8%</b>	\$3,120	<b>1.2%</b>	\$3,944	<b>1.5%</b>	\$7,242	<b>2.7%</b>
T1 P/P	26	\$28,099	\$1,542	<b>5.5%</b>	\$2,044	<b>7.3%</b>	\$2,572	<b>9.2%</b>	\$5,032	<b>17.9%</b>
T3 P	8	\$34,089	\$1,349	<b>4%</b>	\$2,131	<b>6.3%</b>	\$2,955	<b>8.7%</b>	\$6,253	<b>18.3%</b>
T2 P	6	\$148,751	\$1,185	<b>0.8%</b>	\$1,811	<b>1.2%</b>	\$2,471	<b>1.7%</b>	\$5,303	<b>3.6%</b>
Processor Only	5	\$124,207	\$1,053	<b>0.8%</b>						
T1 P	2	\$246,662	\$1,053	<b>0.4%</b>	\$1,555	<b>0.6%</b>	\$2,083	<b>0.8%</b>	\$4,543	<b>1.8%</b>

\*Median FY 2016 Revenue for Spokane County Farmers supplied by Jim MacRae of Straight Line Analytics



“Most bad government has grown out of too much government.” –Thomas Jefferson

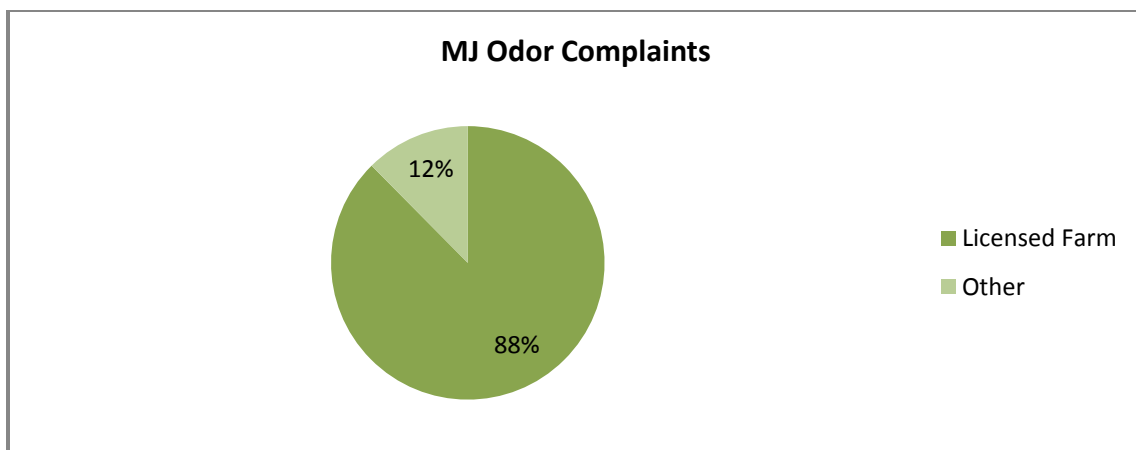
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## A LOOK AT THE NUMBERS

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The Agency indicates on its fact sheet titled “Proposed Rules Marijuana Producers & Processors in Spokane County” that it has received a total of 322 Marijuana Odor Complaints from July 1<sup>st</sup>, 2014 to August 31<sup>st</sup>, 2017. However, at least 40 of these complaints are not directly associated with a licensed marijuana farm.

The 40 marijuana odor complaints not directly associated with licensed marijuana farms include complaints about marijuana retailers, marijuana testing labs, medical marijuana cultivation sites, and unknown locations, as well as complaints about individuals smoking marijuana.

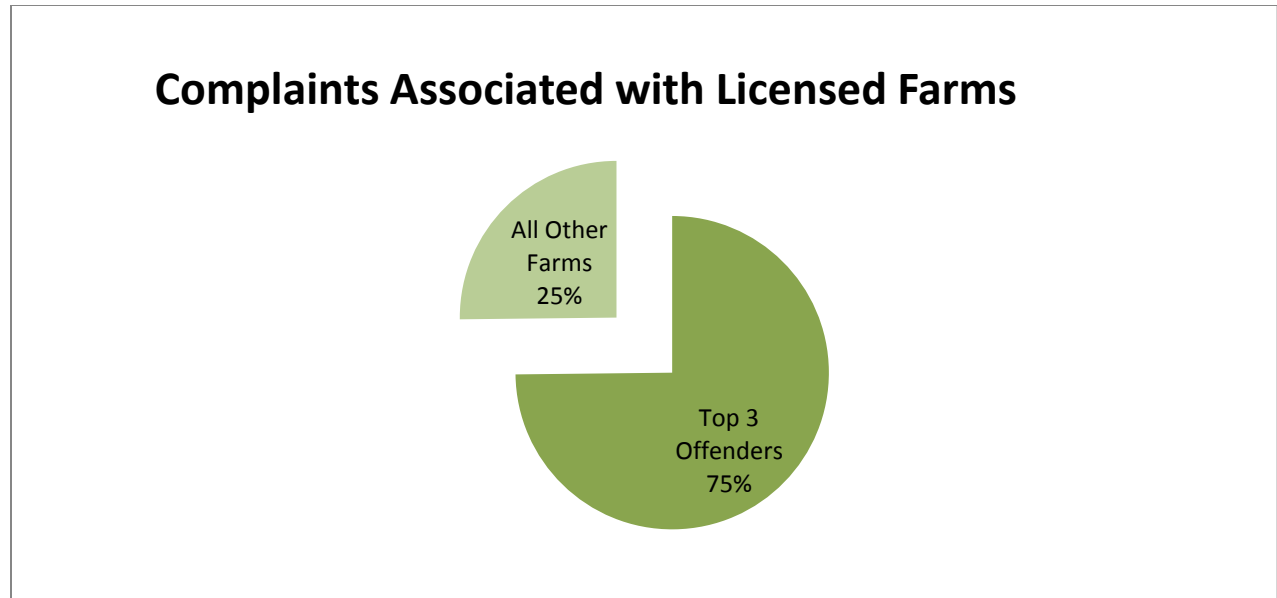


The numbers presented by the Agency also fail to discern that most of the complaints received are associated with only 3 farms.

Bangs	119
MR Wholesale	79
The Happy Crowd	13
<b>Total</b>	<b>211</b>

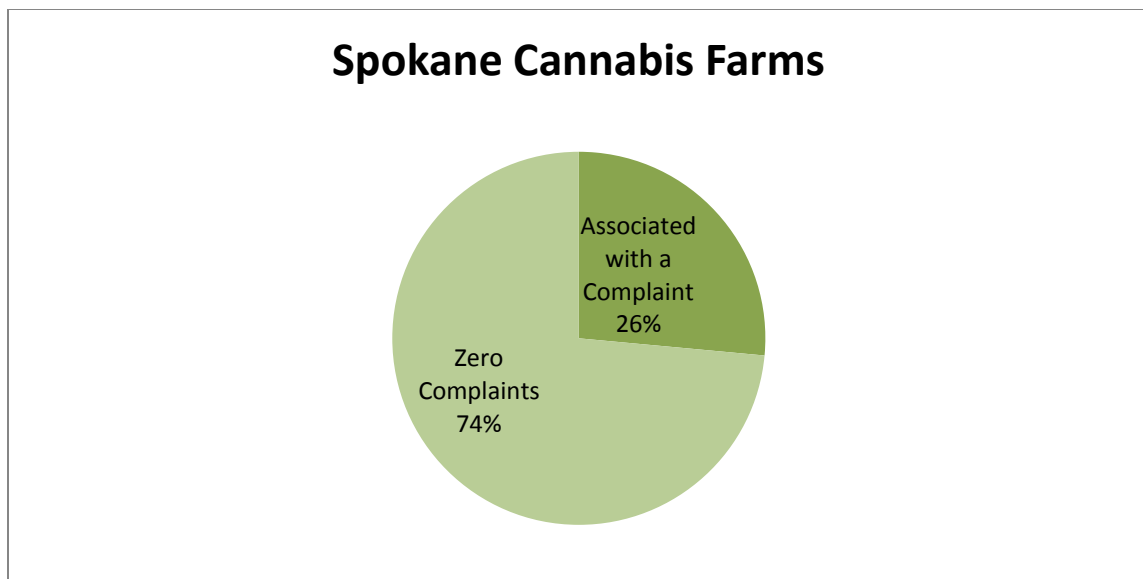


In fact, 75% of the 282 complaints associated with licensed farmers are associated with only 3 farms.

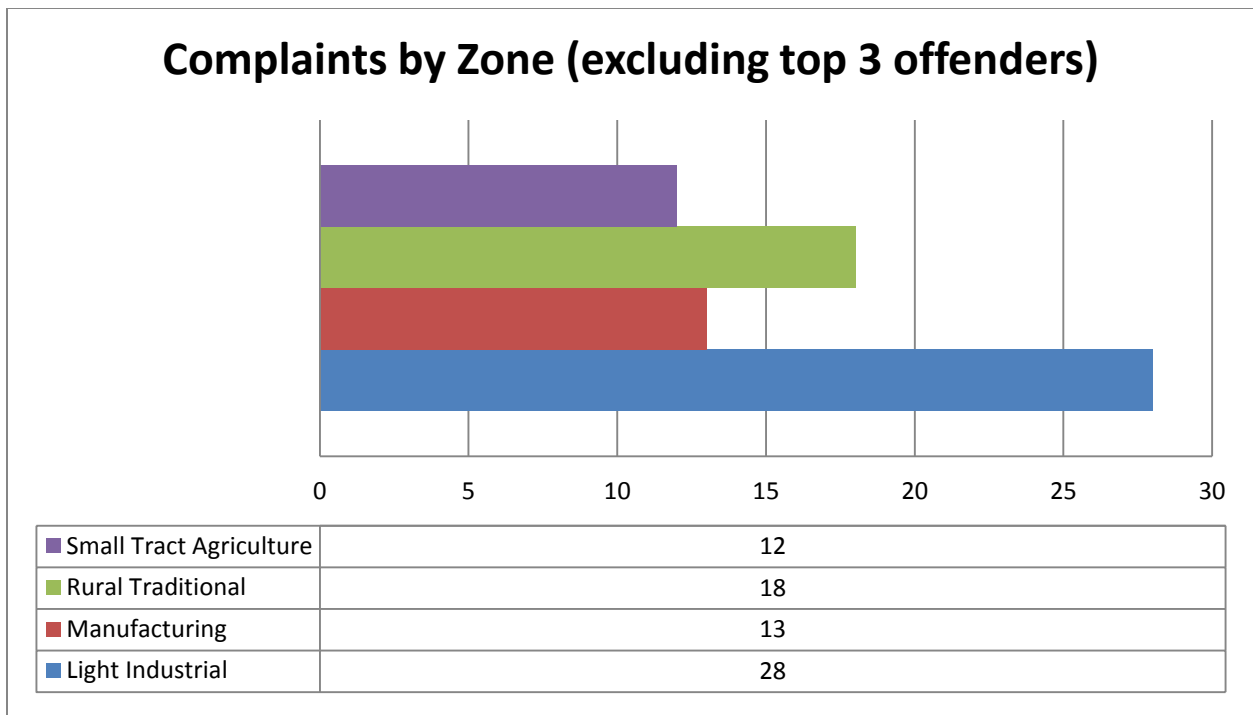
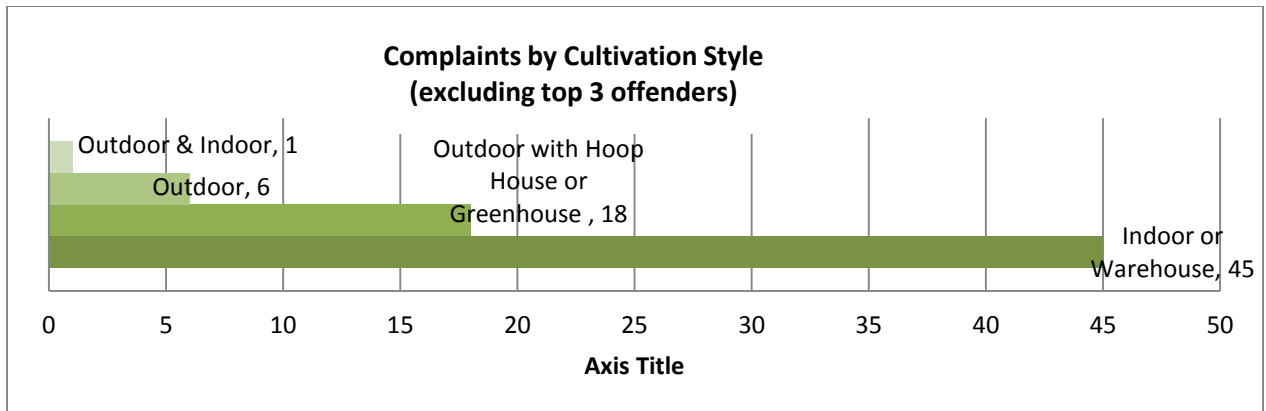


The Agency asserts that it identified 44 unique source addresses; this number appears to include retailers, testing labs, and medical marijuana cultivation sites as well. In reviewing Clean Air’s data and pivoting it based on the “grouping” assigned by Agency staff in the Excel document provided by the Agency, we identified 24 different “groups” associated with licensed farms. This includes 36 different farms, since a number of “groups” and odor source addresses have more than one licensed farmer on the parcel.

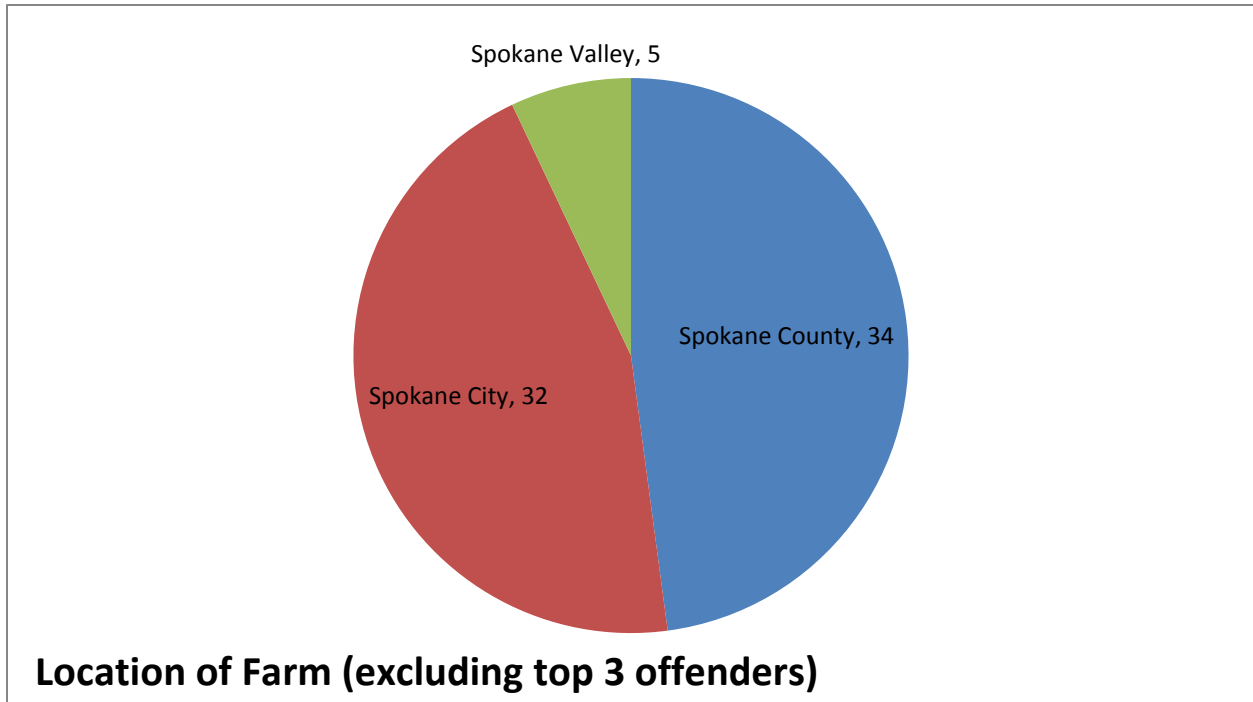
There are 136 licensed producers and processors in the county reporting sales and 74% of these businesses are associated with ZERO odor complaints. Most farmers have had no complaints of any nature.



The Agency proposes that outdoor farmers and farmers utilizing hoop houses should pay higher fees to cultivate cannabis plants outdoors, claiming that those styles of cultivation result in the most complaints. When you remove the three outliers from the equation, the data tells a different story.



We also find it troubling that the Agency approached Spokane County Commissioners, encouraging them to ban outdoor cultivation when half of the complaints were associated with businesses within the city limits and most complaints were associated with indoor cultivation when the 3 outliers are removed.



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### THE IMPACT OF THE AGENCY’S PROPOSED FEES

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Our membership reports that their businesses cannot presently support the proposed fee structure. Should the farmers be assessed these fees, it will likely result in employee layoffs and/or shuttering of businesses. The small independent cannabis farmers of Spokane County simply cannot accommodate another fee on their businesses operations.

# RECOMMENDATIONS

## STOP TARGETING FARMERS TO INCREASE AGENCY REVENUES

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### RECOMMENDATIONS

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Because 75% of the complaints are associated with only 3 cannabis farms in the county, we recommend that the Agency focus on these problem farms, who we understand are cooperating with the Agency to employ odor mitigation technology and improve their relationships with their neighbors. The Agency should not be assessing unreasonably high fees on all farms when the majority, 74%, have had zero odor complaints.

## CONCLUSION

PROTECT SMALL BUSINESSES  
PROTECT JOBS IN SPOKANE COUNTY

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### CONCLUSION

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Ironically, the Agency's hearing date is scheduled for the day after the 5th anniversary of when legal cannabis went into effect in Washington. It's too bad the farmers can't celebrate; instead they're fighting government overreach. It's no wonder there is so much income inequality in the U.S. when government agencies are always trying to take a piece of the revenue from small business owners. We fear for the future viability of small, family-run cannabis farms in this state. Over-regulation and over-taxation are strangling them.

# APPENDIX

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## THE ECONOMIC IMPACT OF THE CURRENT INDUSTRY

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In 2016 Cannabis Farmers generated \$62 million in gross revenue.

Of the 136 producers and processors in Spokane County reporting sales:

- 60 farms reported paying wages in Q4 of 2016
- Employing 1,189 full- and part-time employees in Q4 of 2016
- Paying a median wage of \$12.03 in Q4 of 2016
- Paying more than \$5,302,554 in wages in Q4 of 2016

Since 2014, when sales began Cannabis producers and processors have generated more than \$160 million in gross revenues. \*\*

**\$160 Million in Gross Revenues** is not possible without **significant investment and spending**.

Many of the cannabis farmers in Spokane County subscribe to the philosophy of buying local from other small businesses and Cannabis Farmers Council's constituents report observing many of the small businesses they work with growing alongside their own.

- **Investment Expenses include:** Property acquisition, rent and leases, construction and remodeling, equipment purchases and installation, permitting, inspections, consulting and others.
- **Operational Spending includes:** Fertilizers, soils, electricity, water, labeling, packaging, advertising, consulting, and professional business services to name a few.
- **Other businesses and professionals benefiting from the cannabis industry include:** Numerica Credit Union, UPS, Accountants, Bookkeepers, Attorneys, Electricians, Contractors, Fencing Companies, Security Companies, Farm and Feed Stores, Website Designers, Marijuana Transportation Companies, Cannabis Testing Labs, Printing Companies, Packaging Companies, Hardware Stores, Soil and Compost Companies, Plumbers, and more.

\* [http://www.wsipp.wa.gov/ReportFile/1669/Wsipp\\_Employment-and-Wage-Earnings-in-Licensed-Marijuana-Businesses\\_Report.pdf](http://www.wsipp.wa.gov/ReportFile/1669/Wsipp_Employment-and-Wage-Earnings-in-Licensed-Marijuana-Businesses_Report.pdf) \*\* <https://www.502data.com/county/spokane>

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## POINTS OF HISTORICAL IMPORTANCE

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November 2012, Washington State voters approved Initiative 502 which mandated the legalization of cannabis possession and the establishment of a taxed and regulated cannabis market by the WSLCB (Washington State Liquor Control Board, later re-named the Washington State Liquor & Cannabis Board). Initiative 502 passed with 55.7% approval state-wide and 52.5% approval in Spokane County with 58% of Spokane's precincts voting to approve.

December 2013, The WSLCB opened its limited licensing window to allow Washington State residents to apply for licensure. The regulations put forth by the WSLCB in accordance with the language of Initiative 502 were incredibly small business friendly. Ownership and financing were limited to residents, the application and license fee were reasonable, vertical integration was prohibited, and caps were put in place on the size of the cannabis farms and number of licenses an individual could own. Because the regulations were small business friendly, many individuals and families in rural Spokane immediately applied for licensure.

April 2014, Spokane County Commissioners adopted an Emergency ordinance impacting cannabis farmers throughout the county. Notice was given on Friday, April 11th and the emergency meeting was held first thing Monday, April 14<sup>th</sup>, 2014. This ordinance stated that production and processing could only take place on properties of 8 acres and more and that buildings or property used for production or processing must be set back 300 feet from rear and side property lines and 100 feet from front property lines. The result was a de facto ban on cannabis farming due to the small size of most prospective cannabis farmer's parcels. The Spokane Cannabis farmers engaged with the County Commissioners, the Planning Commission, and Planning Director to identify a compromise between the needs of their farms and their neighbors.

July 2014, WSLCB licensed cannabis retailers opened across the state and the market began to grow, evolve, and mature at a rapid pace. While the cannabis farmers and entrepreneurs worked to run profitable businesses in a new and often volatile market they were also tasked with keeping up with the constantly evolving regulatory environment. Rules and legislation impacting the viability of their businesses were being created from scratch with little outreach to or knowledge of the industry. This required cannabis farmers' active engagement with the Department of Health, the WSLCB, Washington State Department of Agriculture, Washington State Department of Revenue, the State Building Code Council, Clean Air Agencies, Department of Ecology, and of course legislators. Only in the last year have agencies and regulators begun to reach out to cannabis farmers directly and establish workgroups and subcommittees so that regulations could be created in a more cooperative, informed, and business friendly fashion.

January 27<sup>th</sup>, 2015, Zoning Code Amendment 14-ZTA-03 was adopted by the County Commissioners. This ordinance limited outdoor & indoor marijuana production to Small & Large Tract Agricultural and Forest Lands, Rural-5, Rural Traditional, Urban Reserve, Rural Conservation, & Mineral Lands. It required that they be licensed by the WSLCB, employ odor control measures if cultivating indoors, and permitted Tier 1 producers to locate on 3 acre minimum parcels, and Tier 2 & Tier 3 producers were to be sited on 5 acre minimum parcels. The buildings and property being used for production and processing were to be 100 feet from front property line, 50 feet from side & rear property line\*, and 300 feet from primary residence of the adjoining parcel\*.

**\*Can be reduced by 50% with signed waiver from adjacent property owner**

January 2016, Spokane Clean Air Agency established a Marijuana Advisory Committee to become more educated about the cannabis industry and identify how to regulate and collect fees from the many cannabis farmers in Spokane County. The committee included indoor and outdoor cannabis farmers, a representative from the Spokane Regional Health District, as well as various individuals from the planning departments of Spokane City, County, and Valley, the WSLCB, Spokane Police Department, a neighbor of one cannabis farm who had complained to Spokane Clean Air frequently, as well as a former Spokane Planning Commission member who had expressed strong opinions about the dangers of cannabis legalization prior to approving the cannabis zoning recommendations. Many things were discussed, including whether or not Cannabis cultivation was an agricultural activity and thus cultivation on parcels of more than 5 acres, following generally accepted farming practices should be exempt from their oversight in accordance with the Clean Air Act. Spokane Clean Air's executive director was opposed to this concept; though she did at one time agree to remove the statement "Cannabis is not Agriculture" from one of the Committee's founding documents.

December 2016, Spokane County Commissioners adopted an Emergency Ordinance, with no notice, banning the issuance of permits on outdoor cultivation in Spokane County based on recommendations from Spokane Clean Air Agency. The primary reason for lack of notice appears to be a fear of a run on permits by cannabis farmers seeking to protect their businesses' future.

January 2017, the WSLCB began processing cannabis business acquisition applications, allowing individuals and/or companies to own up to three production licenses via acquisition and assumption of other businesses. This will result in consolidation of the industry as well as necessitate growth of existing operators to remain competitive.

On February 8<sup>th</sup>, 2017, Spokane County Commissioners invited the Spokane Clean Air Agency to present information related to marijuana odors in Spokane County as part of a Marijuana Workshop. One of the presentations was titled "MJ Air Emissions Sampling & Testing Project". This presentation outlined that the primary VOC's released by cannabis were monoterpenes including a-pinene, b-pinene, d-limonene, beta-phellandrene, myrcene, and beta-ocimene. They also reviewed the odor detection thresholds of these monoterpenes in ppbv range, noting that many can be detected at very low concentrations.

On February 21<sup>st</sup>, 2017, a second Marijuana Workshop was held. At this workshop the Building & Planning department gave their presentation. The commissioners also considered the Cannabis Farmers Council's "Cannabis Farming in Spokane County" document.

In June of 2017, the Spokane County Commissioners lifted the ban on outdoor marijuana cultivation and adopted a new interim zoning ordinance 17-0539 that instituted additional restrictions, increasing setbacks, and modified the definition of agriculture in Spokane County Zoning code to explicitly exclude cannabis.

The Spokane Planning Commission is scheduled to deliberate on this proposed zoning code text amendment on November 16<sup>th</sup>, 2017.

## PROPOSED FEE SCHEDULE

Marijuana Production and Processing Registration Fees			
Initial Registration Fee			
Registration fee categories	WA State Liquor and Cannabis Board (LCB) defined Producer Tier Size		
	Tier 1	Tier 2	Tier 3
Producer w/ processor license	\$750	\$1000	\$1250
Producer only	\$525		
Processor only	\$525		
Annual Registration Fee			
Registration fee categories	Tier 1	LCB Tier 2	LCB Tier 3
Producer indoor only	\$528	\$660	\$824
Producer outdoor only	\$1030	\$1286	\$1606
Producer indoor & outdoor	\$1558	\$1946	\$2430
Producer w/ Agency granted production exemption	\$3038	\$3798	\$4748
Processor w/ producer license	\$264 + producer fee		
Processor only	\$528		

Production Exemption Application Fee	
One time exemption application fee	\$980