



Whatcom County

COUNTY COURTHOUSE
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Agenda Bill Master Report

File Number: AB2021-590

File ID:	AB2021-590	Version:	1	Status:	Substitute Adopted
File Created:	10/04/2021	Entered by:	JLassite@co.whatcom.wa.us		
Department:	Council Office	File Type:	Ordinance Requiring a Public Hearing		
Assigned to:	Council Planning and Development Committee			Final Action:	10/26/2021
Agenda Date:	10/26/2021			Enactment #:	ORD 2021-066

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TITLE FOR AGENDA ITEM:

Ordinance imposing a second interim moratorium on the acceptance and processing of permit applications for new or expanded recreational cannabis growing and/or processing facilities which are proposed to operate outdoors or in greenhouses

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

This ordinance prohibits, on an interim basis, the filing, acceptance, or processing of permit applications for conversion of land or water, new building or structure permits, or other County permits or authorizations for recreational marijuana production and/or processing facilities, which are proposed to operate in any of the following: (1) open or cleared ground, (2) a non-rigid greenhouse, (3) a greenhouse with rigid walls, a roof and doors, or (4) similar type greenhouse structures. The interim moratorium shall not apply to applications that were filed and determined to be complete prior to the effective date of this ordinance and vested pursuant to Washington statutes, or those for minor tenant improvement permits associated with existing, permitted facilities. For the purposes of this ordinance, a minor tenant improvement permit may include new or replaced equipment or other structural alterations that do not expand the area of the facility or change the use from previous County approvals. This is the second interim ordinance establishing this moratorium. This interim ordinance shall be effective for not longer than six months following its effective date, but may be renewed for one or more six-month periods if subsequent public hearings are held and findings of fact are made prior to each renewal.

HISTORY OF LEGISLATIVE FILE

Agenda Bill Master Report Continued (AB2021-590)

Date:	Acting Body:	Action:	Sent To:
10/12/2021	Council	INTRODUCED FOR PUBLIC HEARING Aye: 5 Browne, Buchanan, Byrd, Donovan, and Frazey Nay: 2 Elenbaas, and Kershner Absent: 0	Council Planning and Development Committee
10/26/2021	Council Planning and Development Committee	NOT ACTED UPON	
10/26/2021	Council	SUBSTITUTE ADOPTED Aye: 5 Browne, Buchanan, Byrd, Donovan, and Frazey Nay: 2 Elenbaas, and Kershner Absent: 0	

Attachments: Original Proposed Ordinance, Substitute Ordinance for 10.26.2021

ORDINANCE NO. 2021-066

**IMPOSING A SECOND INTERIM MORATORIUM ON THE ACCEPTANCE AND
PROCESSING OF PERMIT APPLICATIONS FOR NEW OR EXPANDED RECREATIONAL
CANNABIS GROWING AND/OR PROCESSING FACILITIES WHICH ARE PROPOSED
TO OPERATE OUTDOORS OR IN GREENHOUSES**

WHEREAS, on November 6, 2012, Initiative 502 was passed by the voters of the State of Washington, amending Chapter 69.50 RCW and providing the regulatory framework for cannabis producers, processors, and retailers to become licensed by the Washington State Liquor and Cannabis Board (“WSLCB”); and,

WHEREAS, on November 16, 2013, the WSLCB adopted final cannabis licensing rules as codified in Chapter 314-55 WAC. During the period between November 18, 2013 and December 18, 2013, the WSLCB accepted cannabis license applications for cannabis production, processing and retail facilities. Whatcom County began receiving notifications of proposed cannabis facilities from the WSLCB in mid-December 2013, and the WSLCB began issuing cannabis producer, processor, and retail licenses to qualified applicants in March of 2014; and,

WHEREAS, on January 16, 2014, the Washington State Attorney General issued an opinion stating that Initiative 502 does not preempt counties from banning or placing additional regulatory requirements on cannabis related businesses within their jurisdictions; and,

WHEREAS, the Prosecuting Attorney and Planning and Development Services (PDS) had at the time implemented a zoning interpretation policy, which stated that PDS would regulate cannabis proposed uses as allowed by Initiative 502 in the same way as any other commodity that is grown, processed, or sold in Whatcom County, it became evident that many of those proposed locations could conflict with other surrounding uses; and,

WHEREAS, on February 11, 2014, the Whatcom County Council adopted Ordinance 2014-011, an emergency ordinance imposing a moratorium on the acceptance of all building and/or land use applications that pertain to cannabis producers, processors, retailers and medical cannabis collective gardens; and,

WHEREAS, the County developed and implemented several sets of interim regulations during that time, though none were deemed appropriate by the Council as permanent regulations; and,

WHEREAS, on March 31, 2015, the Whatcom County Council adopted Ordinance 2015-006, which contains the current County zoning regulations for recreational cannabis type uses, treating cannabis similar to other agricultural products; and,

WHEREAS, Whatcom County Code (WCC) 20.97.227 defines marijuana production as a facility licensed by the state Liquor and Cannabis Board to produce, harvest, trim, dry, cure, and package marijuana, and sell marijuana at wholesale to state-licensed marijuana processors and other state licensed marijuana producers; and,

WHEREAS, WCC 20.97.227 states marijuana production may take place either indoors within a fully enclosed secured facility or a greenhouse with rigid walls, a roof and doors, or outdoors in non-rigid greenhouses, other structures or an expanse of open or cleared ground fully enclosed by a physical barrier; and,

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2 **WHEREAS**, Ordinance 2015-006 allows for the production and processing of
3 cannabis in the Rural (administrative uses), Rural Forestry (permitted uses) and Agriculture
4 zone districts (permitted uses), subject to a proposed facility meeting several stated use
5 standards. Such standards include odor controls (for indoor grows only), lighting, traffic and
6 parking control measures, as well as setbacks of 1,000 feet from community centers and
7 300 feet from residences not located on the same property. The ordinance also allowed for
8 the production and processing of marijuana in the Rural Industrial and Manufacturing, Light
9 Impact Industrial, and Heavy Impact Industrial districts as permitted uses, subject to odor
10 control measures (for indoor grows); and,
11

12 **WHEREAS**, the WSLCB is no longer issuing new licenses, existing licenses
13 throughout Washington State can be transferred and Whatcom County was notified by the
14 WSLCB of approximately 30 recreational marijuana production and/or processing renewal
15 licenses last year (2020) within unincorporated Whatcom County; and,
16

17 **WHEREAS**, while earlier licensees were small, local producers, their licenses now
18 appear to be being transferred to larger operators with more capital who are buying up the
19 earlier licenses and expanding and/or changing operations and/or locations; and,
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21 **WHEREAS**, over the last few weeks prior to the adoption of the first interim
22 moratorium, the Council, Executive, Planning Commission, and PDS received complaints
23 from residents adjacent to existing and proposed cannabis facilities regarding excessive
24 odor, lighting, and potential water usage, suggesting that the County's cannabis regulations
25 may not be sufficient; and,
26

27 **WHEREAS**, on March 23, 2021, the County Council adopted the 2021 Docket, a
28 component of the PDS work plan, including item PLN2021-00009, to "*Review and revise*
29 *Whatcom County Code relating to marijuana growing and processing in rural areas.*
30 *Consider impacts of marijuana growing and processing facilities in rural areas, and evaluate*
31 *growing and processing facilities as an agricultural or non-agricultural use. Consider*
32 *compatibility with GMA and County Comprehensive Plan.*" However, due to the pandemic,
33 the Planning Commission and County Council have backlogs of other issues to address, and
34 PDS will need time to work with the community to properly develop and process any
35 potential regulatory amendments; and,
36

37 **WHEREAS**, pursuant to the Washington State Constitution, the general police
38 powers granted to counties empower and authorize Whatcom County to adopt land use
39 controls to provide for the regulation of land uses within the County and to provide that
40 such uses shall be consistent with applicable law; and,
41

42 **WHEREAS**, RCW 36.70A.390 authorizes a county governing body to adopt moratoria
43 and provides that such a moratorium may be effective for up to one year if a work plan is
44 developed and further that such a moratorium may be renewed for one or more six-month
45 periods if a subsequent public hearing is held and findings of fact are made prior to renewal;
46 and
47

48 **WHEREAS**, on April 20, 2021, the County Council adopted Ordinance No. 2021-023,
49 imposing a six-month interim moratorium prohibiting the filing, acceptance, or processing of
50 new applications for permits or authorizations for recreational marijuana production and/or
51 processing facilities which are proposed to operate outdoors or in greenhouses; and
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53 **WHEREAS**, due to the COVID-19 backlogs referenced above, PDS still needs more
54 time to properly develop and process any potential regulatory amendments; and
55
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1
2 **WHEREAS**, the County Council finds that a second interim moratorium is necessary
3 for the protection of public health and safety and to prevent development applications from
4 vesting under current law and thus subverting the purpose of the proposed update to the
5 policies and regulations for cannabis growing and processing operations; and,
6

7 **WHEREAS**, the Whatcom County Council is required by RCW 36.70A.390 to hold a
8 subsequent public hearing and make findings of fact prior to renewing this moratorium;
9

10 **NOW, THEREFORE, BE IT ORDAINED** that the Whatcom County Council adopts
11 the above "WHEREAS" recitals as findings of fact in support of its action as required by RCW
12 36.70A.390.
13

14 **BE IT FURTHER ORDAINED** by the Whatcom County Council that a second interim
15 moratorium is hereby imposed prohibiting the filing, acceptance, or processing of new
16 applications for conversion of land or water, new building or structure permits, or other
17 County permits or authorizations for recreational marijuana production and/or processing
18 facilities which are proposed to operate in any of the following: (1) open or cleared ground,
19 (2) a non-rigid greenhouse, (3) a greenhouse with rigid walls, a roof and doors, or (4)
20 similar type greenhouse structures. The interim moratorium shall not apply to applications
21 that were filed and determined to be complete prior to the effective date of this ordinance
22 and vested pursuant to Washington statutes, or those for minor tenant improvement
23 permits associated with existing, permitted facilities. For the purposes of this ordinance, a
24 minor tenant improvement permit may include new or replaced equipment or other
25 structural alterations that do not expand the area of the facility or change the use from
26 previous County approvals.
27

28 **BE IT FURTHER ORDAINED** that if a section, subsection, paragraph, sentence,
29 clause, or phrase of this ordinance is declared unconstitutional or invalid for any reason by
30 any court of competent jurisdiction; such decision shall not affect the validity of the
31 remaining portions of this ordinance, and if the provisions of this ordinance are found to be
32 inconsistent with other provisions of the Whatcom County Code, this ordinance shall control.
33

34 **BE IT FINALLY ORDAINED** that this interim ordinance shall be effective for not
35 longer than six months following its effective date, but may be renewed for one or more six-
36 month periods if subsequent public hearings are held and findings of fact are made prior to
37 each renewal.

38 **APPROVED** this 26th day of October, 2021.

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40 **ATTEST:**

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44 Dana Brown Davis, Clerk of the Council

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47 **WHATCOM COUNTY COUNCIL**
WHATCOM COUNTY, WASHINGTON

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49
50 *Barry A. Buchanan*
51 Barry Buchanan, Council Chair

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53 **APPROVED AS TO FORM:**

54
55 /s/ Karen Frakes (via e-mail) / JL
Civil Deputy Prosecutor

56
57 **WHATCOM COUNTY EXECUTIVE**
WHATCOM COUNTY, WASHINGTON

58
59 *Satpal Sidhu*
60 Satpal Sidhu, County Executive

61) Approved () Denied

62 Date Signed:

63 10/29/21