

4
5 ORDINANCE NO. _____

6
7 **IMPOSING AN INTERIM MORATORIUM ON THE ACCEPTANCE AND PROCESSING**
8 **OF APPLICATIONS AND PERMITS FOR NEW OR EXPANDED OUTDOOR RECREATIONAL**
9 **CANNABIS GROWING AND/OR PROCESSING FACILITIES**

10
11 **WHEREAS**, on November 6, 2012, Initiative 502 was passed by the voters of the State of
12 Washington, amending Chapter 69.50 RCW and providing the regulatory framework for cannabis
13 producers, processors, and retailers to become licensed by the Washington State Liquor and Cannabis
14 Board (“WSLCB”); and

15
16 **WHEREAS**, on November 16, 2013, the WSLCB adopted final cannabis licensing rules as codified
17 in Chapter 314-55 WAC; and

18
19 **WHEREAS**, during the period between November 18, 2013, and December 18, 2013, the WSLCB
20 accepted cannabis license applications for cannabis production, processing and retail facilities; and
21 Whatcom County began receiving notifications of proposed cannabis facilities from the WSLCB in mid-
22 December 2013; and

23
24 **WHEREAS**, the WSLCB began issuing cannabis producer, processor, and retail licenses to
25 qualified applicants in March of 2014; and

26
27 **WHEREAS**, on January 16, 2014, the Washington State Attorney General issued an opinion
28 stating that Initiative 502 does not preempt counties from banning or placing additional regulatory
29 requirements on cannabis related businesses within their jurisdictions; and

30
31 **WHEREAS**, the Prosecuting Attorney and Planning and Development Services (PDS) had at the
32 time implemented a zoning interpretation policy, which stated that PDS would regulate cannabis
33 proposed uses as allowed by Initiative 502 in the same way as any other commodity that is grown,
34 processed, or sold in Whatcom County, it became evident that many of those proposed locations could
35 conflict with other surrounding uses; and

36
37 **WHEREAS**, on February 11, 2014, the Whatcom County Council adopted Ordinance 2014-011,
38 an emergency ordinance imposing a moratorium on the acceptance of all building and/or land use
39 applications that pertain to cannabis producers, processors, retailers and medical cannabis collective
40 gardens; and

41
42 **WHEREAS**, the County developed and implemented several sets of interim regulations during
43 that time, though none were deemed appropriate by the Council as permanent regulations; and

44
45 **WHEREAS**, on March 31, 2015, the Whatcom County Council adopted Ordinance 2015-006,
46 which contains the current County zoning regulations for recreational cannabis type uses, treating
47 cannabis similar to other agricultural products; and

48
49 **WHEREAS**, these regulations allowed for the indoor production of cannabis to occur within a
50 fully enclosed secured facility or a greenhouse with rigid walls, a roof and doors; and

51
52 **WHEREAS**, the ordinance also allowed outdoor production in non-rigid greenhouses or an
53 expanse of open or cleared ground fully enclosed by a physical barrier; and

1 **WHEREAS**, Ordinance 2015-006 allows for the production and processing of cannabis in the
2 Rural (administrative uses), Rural Forestry (permitted uses) and Agriculture zone districts (permitted
3 uses), subject to a proposed facility meeting several stated use standards, including odor controls (for
4 indoor grows only), lighting, traffic and parking control measures, as well as setbacks of 1,000 feet from
5 community centers and 300 feet from residences not located on the same property; and
6

7 **WHEREAS**, the ordinance also allowed for the production and processing of marijuana in the
8 Rural Industrial and Manufacturing, Light Impact Industrial, and Heavy Impact Industrial districts as
9 permitted uses, subject to odor control measures (for indoor grows); and
10

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

16 **WHEREAS**, while earlier licensees were small, local producers, their licenses now appear to be
17 being transferred to larger operators with more capital who are buying up the earlier licenses and
18 expanding and/or changing operations and/or locations; and
19

20 **WHEREAS**, over the last few weeks the Council, Executive, Planning Commission, and PDS have
21 received complaints from residents adjacent to existing and proposed cannabis facilities regarding
22 excessive odor, lighting, and potential water usage, suggesting that the County’s cannabis regulations
23 may not be sufficient; and
24

25 **WHEREAS**, on February 25, 2021, the Whatcom County Planning Commission requested the
26 County Council consider implementing a moratorium on acceptance of applications for outdoor
27 marijuana growing and processing operations while PDS worked to revise those regulations to address
28 the public concerns; and
29

30 **WHEREAS**, on February 23, 2021, the County Council adopted the 2021 Docket, a component of
31 the PDS work plan, including item PLN2021-00009, to *“Review and revise Whatcom County Code relating
32 to marijuana growing and processing in rural areas. Consider impacts of marijuana growing and
33 processing facilities in rural areas, and evaluate growing and processing facilities as an agricultural or
34 non-agricultural use. Consider compatibility with GMA and County Comprehensive Plan.”*; however, due
35 to the pandemic, the Planning Commission and County Council have backlogs of other issues to address,
36 and PDS will need time to work with the community to properly develop and process any potential
37 regulatory amendments; and
38

39 **WHEREAS**, pursuant to the Washington State Constitution, the general police powers granted to
40 counties empower and authorize Whatcom County to adopt land use controls to provide for the
41 regulation of land uses within the County and to provide that such uses shall be consistent with
42 applicable law; and
43

44 **WHEREAS**, RCW 36.70A.390 authorizes a county governing body to adopt moratoria and
45 provides that such a moratorium may be effective for up to one year if a work plan is developed and
46 further that such a moratorium may be renewed for one or more six-month periods if a subsequent
47 public hearing is held and findings of fact are made prior to each renewal; and
48

49 **WHEREAS**, the County Council finds that the interim moratorium imposed by this interim
50 ordinance is necessary for the protection of public health and safety; and
51

1 **WHEREAS**, it is necessary to adopt an interim moratorium to prevent development applications
2 from vesting under current law and thus subverting the purpose of the proposed update to the policies
3 and regulations for cannabis growing and processing operations; and
4

5 **WHEREAS**, the Whatcom County Council is required by RCW 36.70A.390 to hold a public hearing
6 within sixty (60) days of passage of this ordinance.
7

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

11 **BE IT FURTHER ORDAINED** by the Whatcom County Council that an interim moratorium is
12 hereby imposed prohibiting the filing, acceptance, or processing of new applications for conversion of
13 land or water, new building or structure permits, or other County permits or authorizations for outdoor
14 recreational marijuana production and/or processing facilities.
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16 **BE IT FURTHER ORDAINED** that this interim moratorium shall not apply to applications that
17 were filed and determined to be complete prior to the effective date of this ordinance and vested
18 pursuant to Washington statutes, or those for minor tenant improvement permits associated with
19 existing, permitted facilities.
20

21 **BE IT FURTHER ORDANCED** for the purposes of this ordinance, a minor tenant improvement
22 permit may include new or replaced equipment or other structural alterations that do not expand the
23 area of the facility or change the use from previous County approvals.
24

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

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

35 **APPROVED** this _____ day of _____, 2021.
36

37 **ATTEST:**

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

38
39
40 _____
41 Dana Brown Davis, Clerk of the Council
42

Barry Buchanan, Council Chair
43

44 **APPROVED AS TO FORM:**

WHATCOM COUNTY EXECUTIVE
WHATCOM COUNTY, WASHINGTON

45
46
47 _____
48 Civil Deputy Prosecutor
49

Satpal Sidhu, County Executive
50

() Approved () Denied
51

Date Signed: _____
52