

CLERK OF THE COUNCIL
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COUNCILMEMBERS
Rud Browne
Barry Buchanan
Tyler Byrd
Todd Donovan
Ben Elenbaas
Carol Frazey
Kathy Kershner

WHATCOM COUNTY COUNCIL
**AGENDA REVISION NOTICE
FOR MARCH 23, 2021**

**VIRTUAL MEETING
AGENDA REVISED 3.22.2021
(TO PARTICIPATE, SEE INSTRUCTIONS AT
www.whatcomcounty.us/joinvirtualcouncil
OR CALL 360.778.5010)**

THE FOLLOWING ITEM HAS BEEN WITHDRAWN FROM FINANCE AND ADMINISTRATIVE SERVICES COMMITTEE AND COUNCIL:

CONSENT AGENDA

2. AB2021-129 Resolution to set hearing and notice of hearing on sale of county tax title property

Reason: Withdrawn at the request of the Treasurer's Office.

THE FOLLOWING ITEM HAS BEEN WITHDRAWN FROM COUNCIL:

INTRODUCTION

5. AB2021-130 Resolution to sell county tax title property by public auction

Reason: Withdrawn at the request of the Treasurer's Office.

THE FOLLOWING ITEM HAS BEEN ADDED TO COUNCIL FOR INTRODUCTION

ITEMS ADDED BY REVISION

1. AB2021-190 Ordinance imposing an interim moratorium on the acceptance and processing of applications and permits for new or expanded outdoor recreational cannabis growing and/or processing facilities (ordinance attached below)

ORDINANCE NO. _____

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

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; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

BE IT FURTHER ORDAINED by the Whatcom County Council that an interim moratorium is hereby imposed prohibiting the filing, acceptance, or processing of new applications for conversion of land or water, new building or structure permits, or other County permits or authorizations for outdoor recreational marijuana production and/or processing facilities.

BE IT FURTHER ORDAINED that this 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.

BE IT FURTHER ORDANCED 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.

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

BE IT FINALLY ORDAINED that 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.

APPROVED this _____ day of _____, 2021.

ATTEST:

**WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON**

Dana Brown Davis, Clerk of the Council

Barry Buchanan, Council Chair

APPROVED AS TO FORM:

**WHATCOM COUNTY EXECUTIVE
WHATCOM COUNTY, WASHINGTON**

Civil Deputy Prosecutor

Satpal Sidhu, County Executive

() Approved () Denied

Date Signed: _____