



# Whatcom County

COUNTY COURTHOUSE  
311 Grand Avenue, Ste #105  
Bellingham, WA 98225-4038  
(360) 778-5010

## Agenda Bill Master Report

File Number: AB2021-190

---

<b>File ID:</b>	AB2021-190	<b>Version:</b>	1	<b>Status:</b>	Adopted
<b>File Created:</b>	03/18/2021	<b>Entered by:</b>	DBrown@co.whatcom.wa.us		
<b>Department:</b>	Council Office	<b>File Type:</b>	Ordinance		
<b>Assigned to:</b>	Council			<b>Final Action:</b>	04/06/2021
<b>Agenda Date:</b>	04/06/2021			<b>Enactment #:</b>	ORD 2021-018

---

Primary Contact Email: TDonovan@co.whatcom.wa.us

### TITLE FOR AGENDA ITEM:

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

### SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

This ordinance prohibits, on an interim basis, 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. 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. 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

---

Date:	Acting Body:	Action:	Sent To:
03/23/2021	Council	INTRODUCED FOR PUBLIC HEARING	Council
		Aye: 6	Browne, Buchanan, Byrd, Donovan, Frazey, and Kershner
		Nay: 1	Elenbaas
		Absent: 0	

04/06/2021 Council

ADOPTED

Aye: 6 Browne, Buchanan, Byrd, Donovan, Frazey, and Kershner  
Nay: 1 Elenbaas  
Absent: 0

---

**Attachments:** Proposed Ordinance

5 ORDINANCE NO. 2021-018  
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.  
15

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 ORDIANCED** 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 6th day of April, 2021.

36  
37 **ATTEST:**

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


42  
43  
44 **APPROVED AS TO FORM:**

45  
46 Approved via email by Karen Frakes / LB  
47  
48 Civil Deputy Prosecutor  
49

50  
51 **WHATCOM COUNTY COUNCIL**  
52 **WHATCOM COUNTY, WASHINGTON**

  
Barry Buchanan, Council Chair

**WHATCOM COUNTY EXECUTIVE**  
**WHATCOM COUNTY, WASHINGTON**

  
Satpal Sidhu, County Executive

Approved ( ) Denied

Date Signed: 4/9/21