1 2 3	PROPOSED BY: INTRODUCTION DATE: OCTOBER 12, 2021
4 5	ORDINANCE NO
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7	IMPOSING A SECOND INTERIM MORATORIUM ON THE ACCEPTANCE AND
8	PROCESSING OF PERMIT APPLICATIONS FOR NEW OR EXPANDED RECREATIONAL
9	CANNABIS GROWING AND/OR PROCESSING FACILITIES WHICH ARE PROPOSED
10	TO OPERATE OUTDOORS OR IN GREENHOUSES
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12 13	WHEREAS, on November 6, 2012, Initiative 502 was passed by the voters of the
14	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
15	State Liquor and Cannabis Board ("WSLCB"); and,
16	State Eldadi and Calmabis Board ( WSECB ), and,
17	WHEREAS, on November 16, 2013, the WSLCB adopted final cannabis licensing
18	rules as codified in Chapter 314-55 WAC. During the period between November 18, 2013
19	and December 18, 2013, the WSLCB accepted cannabis license applications for cannabis
20	production, processing and retail facilities. Whatcom County began receiving notifications of
21	proposed cannabis facilities from the WSLCB in midDecember 2013, and the WSLCB began
22	issuing cannabis producer, processor, and retail licenses to qualified applicants in March of
23 24	2014; and,
25	WHEREAS, on January 16, 2014, the Washington State Attorney General issued an
26	opinion stating that Initiative 502 does not preempt counties from banning or placing
27	additional regulatory requirements on cannabis related businesses within their jurisdictions;
28	and,
29	WHEREAS, the Prosecuting Attorney and Planning and Development Services (PDS)
30	had at the time implemented a zoning interpretation policy, which stated that PDS would
31	regulate cannabis proposed uses as allowed by Initiative 502 in the same way as any other
32 33	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,
34	many of those proposed locations could conflict with other surrounding uses, and,
35	WHEREAS, on February 11, 2014, the Whatcom County Council adopted Ordinance
36	2014-011, an emergency ordinance imposing a moratorium on the acceptance of all building
37	and/or land use applications that pertain to cannabis producers, processors, retailers and
38	medical cannabis collective gardens; and,
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40	WHEREAS, the County developed and implemented several sets of interim
41	regulations during that time, though none were deemed appropriate by the Council as permanent regulations; and,
42 43	permanent regulations, and,
44	WHEREAS, on March 31, 2015, the Whatcom County Council adopted Ordinance
45	2015-006, which contains the current County zoning regulations for recreational cannabis
46	type uses, treating cannabis similar to other agricultural products; and,
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48	WHEREAS, Whatcom County Code (WCC) 20.97.227 defines marijuana production
49	as a facility licensed by the state Liquor and Cannabis Board to produce, harvest, trim, dry,
50 51	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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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. Such standards include 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. 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

WSLCB of approximately 30 recreational marijuana production and/or processing renewal licenses last year (2020) within unincorporated Whatcom County; and, WHEREAS, while earlier licensees were small, local producers, their licenses now

throughout Washington State can be transferred and Whatcom County was notified by the

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 March 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 renewal; and

WHEREAS, on April 20, 2021, the County Council adopted Ordinance No. 2021-023, imposing a six-month interim moratorium prohibiting the filing, acceptance, or processing of new applications for permits or authorizations for recreational marijuana production and/or processing facilities which are proposed to operate outdoors or in greenhouses; and

WHEREAS, due to the COVID-19 backlogs referenced above, PDS still needs more time to properly develop and process any potential regulatory amendments; and

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

for the protection of public health and safety and 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 County Council finds that a second interim moratorium is necessary

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 a second 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 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.

**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 sixmonth 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: