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ORDINANCE NO. 425 - AN ORDINANCE RELATING TO RECREATIONAL MARIJUANA LAND USES; MODIFYING WALLA WALLA COUNTY CODE CHAPTER 17.16.010 TO PROHIBIT LAND USES RELATING TO RECREATIONAL MARIJUANA, INCLUDING, BUT NOT LIMITED TO, PRODUCTION, PROCESSING, STORAGE AND RETAIL SALE OF RECREATIONAL MARIJUANA AND RECREATIONAL MARIJUANA-DERIVED PRODUCTS

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**BOARD OF COUNTY COMMISSIONERS
WALLA WALLA COUNTY, WASHINGTON**

ORDINANCE NO. 425

AN ORDINANCE RELATING TO RECREATIONAL MARIJUANA LAND USES; MODIFYING WALLA WALLA COUNTY CODE CHAPTER 17.16.010 TO PROHIBIT LAND USES RELATING TO RECREATIONAL MARIJUANA, INCLUDING, BUT NOT LIMITED TO, PRODUCTION, PROCESSING, STORAGE AND RETAIL SALE OF RECREATIONAL MARIJUANA AND RECREATIONAL MARIJUANA-DERIVED PRODUCTS.

WHEREAS, the Washington voters approved Initiative 502 (I-502) in 2012, which “authorizes the state liquor control board to regulate and tax marijuana for persons twenty-one years of age and older, and add a new threshold for driving under the influence of marijuana” (I-502, Sec. 1(3)); and

WHEREAS, marijuana is currently listed as a Schedule I Controlled Substance of the Controlled Substances Act, 21 USC 812; and

WHEREAS, I-502 allows the Washington State Liquor Control Board to license marijuana producers “to produce marijuana for sale at wholesale to marijuana processors and other marijuana producers” (I-502, Sec. 4(1)); and

WHEREAS, I-502 allows the Washington State Liquor Control Board to license marijuana processors to “process, package and label usable marijuana and marijuana-infused products for sale at wholesale to marijuana retailers” (I-502, Sec. 4(2)); and

WHEREAS, I-502 allows the Washington State Liquor Control Board to license marijuana retailers to “sell usable marijuana and marijuana-infused products at retail in retail outlets” (I-502, Sec. 4(3)); and

WHEREAS, under I-502, before the Washington State Liquor Control Board issues a new or renewed license to an applicant, it must give notice of the application to the county legislative authority, and a county has the right to file its written objections to such license within 20 days after transmittal of the notice of application, but the Liquor Control Board makes the final decision whether to issue a license (I-502, Sec. 6 (7)); and

WHEREAS, Walla Walla County enacted Ordinance 415 on September 16, 2013, which placed a moratorium on the acceptance or issuance of project permits for recreational marijuana producers, processors and retailers, (Section II, B, 1-3); and



WHEREAS, Ordinance 415 enacted interim zoning that stated that marijuana production, marijuana processing and marijuana retailing shall not be considered permitted or allowed uses in unincorporated Walla Walla County during the pendency of the Ordinance (Section II, B, 4); and

WHEREAS, Ordinance 415 was in effect for a period of one year; and

WHEREAS, Article XI, Section 11 of the Washington State Constitution provides that “[a]ny county, city, town or township may make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with general laws,” which includes zoning regulations; and

WHEREAS, the Washington State Attorney General issued an opinion on January 16, 2014, that provided that a zoning regulation that prohibits recreational marijuana land uses and “promotes public safety, health, or welfare and bears a reasonable and substantial relation to accomplishing the purpose pursued,” would be a legitimate exercise of police power and would not be preempted by I-502; and

WHEREAS, pursuant to Walla Walla County Code 14.15.030, the Board of County Commissioners may amend development regulations more often than once a year, outside of the docketing process, as determined by a majority vote of the Board of County Commissioners to be in the long term interests of the County;

NOW THEREFORE,

BE IT ORDAINED, by the Walla Walla County Board of County Commissioners that:

Section I. The Board of County Commissioners Makes the Following Findings of Fact and Conclusions of Law.

A. Findings of Fact.

1. I-502 decriminalizes, for purposes of state criminal law, the production, manufacture, processing, packaging, delivery, distribution, sale or possession of marijuana, as long as such activities are in compliance with I-502.
2. The Liquor Control Board’s June 3, 2013 SEPA environmental checklist stated: “[T]he odor of growing or ‘green’ marijuana may alert malefactors to the location where marijuana is grown and creating [sic] the risk of burglary and robbery at that location.” (SEPA Environmental Checklist, page 4).
3. The Liquor Control Board’s June 3, 2013 SEPA environmental checklist stated: “Due to the high monetary value placed upon marijuana, areas can experienced [sic] a number of home invasion robberies, thefts and murders related to marijuana cultivation, which impacts local law enforcement.” (SEPA Environmental Checklist, page 6).

4. The Liquor Control Board's SEPA environmental checklist stated: "The [Liquor Control Board] does not believe the proposal conflicts with local, state or federal law or requirements for the protection of the environment." (SEPA Environmental Checklist, page 6). The Board of County Commissioners does not agree with this analysis of federal law.

5. On August 29, 2013, the U.S. Department of Justice issued a memorandum to all United States Attorneys, regarding "Guidance Regarding Marijuana Enforcement." The document was intended to "provide guidance to federal prosecutors concerning marijuana enforcement under the Controlled Substances Act (CSA)." The memorandum noted that:

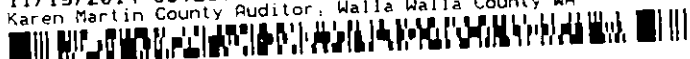
The Department's Guidance in this memorandum rests on its expectation that states and local governments that have enacted laws authorizing marijuana-related conduct will implement strong and effective regulatory and enforcement systems that will address the threat those state laws could pose to public safety, public health, and other law enforcement interests. A system adequate to that task must not only contain robust controls and procedures on paper; it must also be effective in practice.

The memorandum further noted that:

As with the Department's previous statements on this subject, this memorandum is intended solely as a guide to the exercise of investigative and prosecutorial discretion. This memorandum does not alter in any way the Department's authority to enforce federal law, including federal laws relating to marijuana, regardless of state law. Neither the guidance herein nor any state or local law provides a legal defense to a violation of federal law, including any civil or criminal violation of the CSA. Even in jurisdictions with strong and effective regulatory systems, evidence that particular conduct threatens federal priorities will subject that person or entity to federal enforcement action, based on the circumstances.

The memorandum also stated the following enforcement priorities were important to the federal government:

- Preventing the distribution of marijuana to minors;
- Preventing revenue from the sale of marijuana from going to criminal enterprises, gangs and cartels;
- Preventing the diversion of marijuana from states where it is legal under state law in some form to other states;
- Preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity;
- Preventing violence and the use of firearms in the cultivation and distribution of marijuana;
- Preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use;
- Preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and
- Preventing marijuana possession or use on federal property.



6. In January of 2014, the County contracted with Stalzer and Associates to review recreational marijuana land uses.

7. In January of 2014, the Board of County Commissioners adopted a work plan and project principles for enacting recreational marijuana land use regulations.

8. The project principles adopted by the Board noted that the County Planning Commission was to review which zones recreational marijuana land uses should be permitted in, and whether additional regulations, such as Conditional Use Permits, were necessary.

9. The project principles adopted by the Board stated that, after receiving the County Planning Commission's recommendation, the Board would additionally consider whether an outright ban on recreational marijuana land uses, or a prohibition on recreational marijuana land uses until such uses are allowed by Federal Law, were a preferred option to the zoning options set forth above.

10. During the County Planning Commission review, County Sheriff John Turner submitted testimony regarding the potential adverse impacts to County law enforcement services.

11. Stalzer and Associates, on behalf of the County, prepared proposed code amendments that were reviewed by the County Planning Commission at workshop held on May 7, 2014.

12. A public hearing was held before the County Planning Commission on June 4, 2014, and that body adopted recommendations to be made to the Walla Walla County Board of Commissioners regarding possible code amendments.

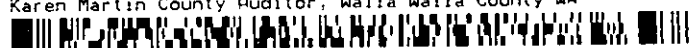
13. The Board of County Commissioners reviewed the County Planning Commission's recommendations and other information regarding land use regulations/zoning for production, processing, and retail marketing of recreational marijuana relative to I-502 in a public workshop held July 29, 2014.

14. On August 6, 2014, the Department of Commerce acknowledged receipt of the proposed amendments recommended by the County Planning Commission.

15. On August 6, 2014, the Walla Walla Walla Joint Community Development Agency issued a SEPA Determination of Non-Significance for the proposed amendments to Chapter 17.16. No appeal was received.

16. On August 21, 2014, the Tri-City Herald, the Waitsburg Times and Walla Walla Union-Bulletin published a public hearing notice for the Board of County Commissioners' September 2, 2014 hearing. The notice of public hearing noted that among other options, the Commissioners would discuss a prohibition of recreational marijuana land uses as an option, and the extension of the moratorium and interim zoning under Ordinance 415 as an option.

17. The Board held a public hearing on September 2, 2014. After receiving public comment, the Board voted to enact a permanent prohibition of land uses engaged in the production, processing or retail sale of marijuana, and to extend Ordinance 415.



18. On September 8, 2014, the Board enacted Ordinance 424, which extended Ordinance 415's moratorium and interim zoning regulations for an additional 63 days, until November 18, 2014.

19. On October 15, 2014, Stalzer and Associates submitted a memo with proposed amendments to Walla Walla County Code Chapter 17.16 that would prohibit recreational marijuana land uses in unincorporated Walla Walla County.

20. On October 21, 2014, the Walla Walla Joint Community Development Agency issued a SEPA Determination of Non Significance for the proposed amendments to Chapter 17.16. No appeal was received.

21. On October 21, 2014, the Department of Commerce acknowledged receipt of the proposed amendments recommended by Stalzer and Associates. On November 5, 2014, the Department of Commerce granted expedited review.

22. On October 23, 2014, the Tri-City Herald, the Waitsburg Times and Walla Walla Union-Bulletin published a public hearing notice for the Board of County Commissioners' November 3, 2014 hearing.

23. The Board of County Commissioners held an additional public hearing on November 3, 2014, to consider enactment of amendments to Walla Walla County Code Chapter 17.16.

24. Testimony at the Board's public hearings was mixed in favor and against allowing recreational marijuana land uses. At the Board's hearing on November 3, 2014, most of the testimony supported prohibiting recreational marijuana land uses.

25. On November 3, 2014, the Board of County Commissioners approved, by motion, the enactment of amendments to Title 17.16 to prohibit land uses connected with the production, processing and sale of recreational marijuana.

B. Conclusions of Law:

1. Prior to 2013, the uses described in I-502 and the Liquor Control Board's Rules have never been allowed in any state or city in the United States, although some local governments have adopted ordinances allowing such uses in the past year. Legalized marijuana has not been allowed in Colorado or Washington long enough for a clear documented history of impacts.

2. The Board is of the opinion that allowing recreational marijuana land uses will have a negative impact on the unincorporated areas of Walla Walla County and the agencies of Walla Walla County.



3. Due to Walla Walla County's proximity to the States of Oregon (immediately to the south) and Idaho (approximately 80 miles to the west of the County), the possibility of marijuana purchased at retail outlets in Walla Walla County crossing state lines is likely. It is unclear whether Oregon's legalization of marijuana will allow marijuana grown in the State of Washington to be transported to Oregon, although federal laws and the Department of Justice's priorities would certainly be implicated by such interstate transit.

4. There are numerous uncertainties about recreational marijuana's impacts on the public health, safety and welfare. Preventing drugged driving and the prevention of the exacerbation of other adverse public health consequences are federal priorities.

5. An increased availability of marijuana, and resulting substance abuse, will likely have a negative impact on County mental health and drug treatment services. In 2011, the County raised sales taxes to help fund these services, which are currently strained.

6. An increased availability of marijuana will likely lead to its increased availability to minors, especially through marijuana-infused products. Preventing the distribution of marijuana to minors is a federal priority.

7. Land uses related to marijuana will likely have a negative impact on County law enforcement services. Public spending priorities for County services within rural areas are to maintain or upgrade services at rural level standards to existing, not new, development (Comprehensive Plan Policy RL-13).

8. Because the impacts of recreational marijuana land uses appear to be negative, it is not possible locate those uses in areas where environmental impacts and other hazards can be controlled and separated from other incompatible land uses (County Comprehensive Plan Land Use Policy 25, Land Use Policy 27).

9. Because the impacts of recreational marijuana land uses appear to be negative, such uses cannot be sited in rural or agricultural zones, as the uses are inconsistent with a rural or agrarian atmosphere (County Wide Planning Policy 10.7).

10. Because the impacts of recreational marijuana land uses appear to be negative, such uses cannot be sited on agriculturally-designated land, as they will likely conflict with productive farmland (Policy RL-43).

11. It is unlikely that the County will have any means to ensure that any proposed production, processing or retail establishment for recreational marijuana does not violate the guidelines and priorities established by the Department of Justice. The County has no ability to ensure that "strong and effective" regulatory and enforcement systems are in place. The Board must note that the uses still remain illegal under federal law, and the current priorities of the Department of Justice do not constitute a defense against future prosecution. Because the County has no ability to create such an enforcement system that will protect "public safety, public health, and other law enforcement interests," (as stated in the Department of Justice Memorandum) the County cannot allow recreational marijuana land uses.

Section II. The following amendment to Walla Walla County Code Chapter 17.16.010 is enacted:

17.16.010 Establishment of uses.

The use of a property is defined by the activity for which the building or lot is intended, designed, arranged, occupied or maintained. All applicable requirements of this code, or other applicable state or federal requirements, shall govern a use located in unincorporated Walla Walla County. Any recreational marijuana land use including, but not limited to, production, processing, storage, and retail sale of recreational marijuana and recreational marijuana-derived products are prohibited land uses in unincorporated Walla Walla County. (Ord. 269 (part), 2002; Ord. 312 (part), 2005; Ord. 343 §§ 1, 2, 2007)

Section III. Severability. If any section, subsection, paragraph, sentence, clause or phrase of this Ordinance is declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining parts of this Ordinance.


Section IV. Publication. This Ordinance will be published by an approved summary consisting of the title.

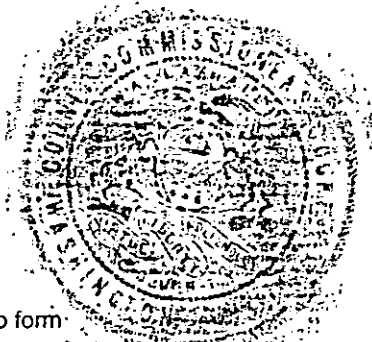
Section V. Effective Date and Savings. This Ordinance is effective upon signing.

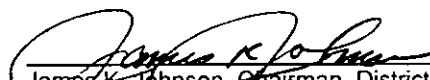
PASSED by the Walla Walla County Board of County Commissioners in regular session at Walla Walla, Washington, then signed by its membership and attested by its Clerk in authorization of such passage this 17th day of November, 2014.

Approved this 17th day of November, 2014

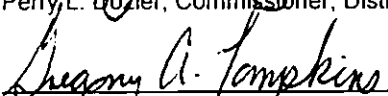
Attest:


Connie R. Vinti, Clerk of the Board



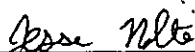

James K. Johnson, Chairman, District 1


Perry L. Dozier, Commissioner, District 2


Gregory A. Tompkins, Commissioner, District 3

Constituting the Board of County Commissioners
of Walla Walla County, Washington

Approved as to form:


Jesse D. Nolte, Deputy Prosecuting Attorney

