

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

ORDINANCE NO. ____

AN ORDINANCE RELATING TO THE RECREATIONAL USE OF MARIJUANA, DECLARING AN EMERGENCY, ESTABLISHING AN IMMEDIATE MORATORIUM ON THE SITING, ESTABLISHING AND OPERATING OF ANY STRUCTURES OR USES RELATING TO MARIJUANA PRODUCTION, MARIJUANA PROCESSING, OR MARIJUANA RETAILING AND THE SUBMISSION OF ANY PROJECT PERMIT OR APPLICATIONS FOR SUCH USES, ENACTING INTERIM ZONING, AND SETTING TWELVE MONTHS AS THE EFFECTIVE PERIOD OF THE MORATORIUM AND INTERIM ZONING; ALLOWING TIME TO REVIEW THE EFFECT OF THE LICENSING OF SUCH USES, TO REVIEW FEDERAL LAW ENFORCEMENT’S RESPONSE TO SUCH USES AND TO STUDY THE LAND USE IMPACTS OF SUCH USES.

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 the 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, in conformity with the responsibilities of Walla Walla County to meet public health, safety and welfare requirements and provide zoning and land use regulations pursuant to state law, and the County's authority to regulate land use activity outside of the incorporated limits of cities and towns, the County intends to develop appropriate public health, safety and welfare requirements and zoning and land use regulations for the establishment of facilities producing, processing and retailing of recreational marijuana; and

WHEREAS, a moratorium and interim zoning will provide the County with additional time to review and amend its public health, safety and welfare requirements and zoning and land use regulations related to the establishment of facilities producing, processing and retailing marijuana; and

WHEREAS, the Liquor Control Board has indicated it will likely adopt rules for issuing licenses to recreational marijuana businesses by October 16, 2013;

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 establishes certain siting limitations on the Washington State Liquor Control Board's issuance of such licenses for any premises that are within 1,000 feet of the perimeter of the grounds of any elementary or secondary school, playground, recreation center or facility, child care center, public park, public transit center or library, or any game arcade, admission to which is not restricted to persons aged twenty-one years or older (I-502, Sec. 6(8)).
2. I-502 contemplates that the Washington State Liquor Control Board will adopt rules to implement the provisions of I-502, which includes the equipment and management of retail outlets and premises where marijuana is produced and processed, and the inspection of same; methods of producing, processing, and packaging the marijuana and marijuana products; security requirements at such establishments; retail outlet locations and hours of operation; labeling requirements and restrictions on advertising of such products; licensing and licensing renewal rules; the manner and method to be used by licensees to transport and deliver marijuana and marijuana products (among other things), (I-502, Sec. 9).
3. I-502 contemplates that the Washington State Liquor Control Board will adopt procedures and criteria by December 1, 2013 for issuing licenses to produce, process and sell marijuana (among other things), (I-502, Sec. 10).

4. On July 3, 2013, the Liquor Control Board modified its draft regulations to allow for outdoor production (growing) of marijuana.
5. Walla Walla County Code 17.16.014 currently lists “Growing of Crops” as an outright permitted use in all zoning districts. “Growing of Crops” is defined by Walla Walla Code 17.08.253 as:

"Growing of Crops" means establishments primarily engaged in the production of crops, plants, vines, and trees (excluding forestry operations, retail nurseries, and commercial greenhouses); in the operation of sod farms; in the production of mushrooms, bulbs, flower seeds, vegetable seeds and seeds of field crops; and in the growing of hydroponic crops.
6. I-502 limits the number of retail outlets to be licensed in each county, for the purpose of making useable marijuana and marijuana-infused products available for sale to adults 21 years of age or over (I-502, Sec. 13).
7. I-502 decriminalizes, for purposes of state law, the production, manufacture, processing, packaging, delivery, distribution, sale or possession of marijuana, as long as such activities are in compliance with I-502.
8. At this point in time, Walla Walla County does not have any regulations specifically addressing the facilities or uses identified in I-502, other than general requirements for zoning and building permits.
9. Prior to this year, 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 recent months. The County needs time to study the secondary land use impacts of these marijuana uses, the response from Federal law enforcement, and the various development standards that should be considered to mitigate these impacts before adoption of any regulatory ordinance or issuance of any building permits for these uses.
10. 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 unlawfully crossing state lines is likely.
11. The Liquor Control Board’s SEPA environmental checklist for the proposed rules did not appear to completely analyze the impact of outdoor growing of marijuana, but noted that “local land use regulations will avoid or minimize other impacts to sensitive areas.” (SEPA Environmental Checklist dated June 3, 2013, page 5). Walla Walla County will need to analyze its local land use regulations, particularly zoning laws, to determine whether or how environmentally sensitive areas may need additional protection from these new uses.

12. The Liquor Control Board's 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 dated June 3, 2013, page 4.)

13. The Liquor Control Board's 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 dated June 3, 2013, page 6). Walla Walla County will need to analyze what zones, if any, of the County are appropriate to allow such uses in order to mitigate or eliminate such impacts.

14. 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.

15. On August 15 and 22, 2013 a Notice of Public Hearing was published in the Waitsburg Times. On August 15 and 22, 2013 a Notice of Public Hearing was published in the Walla Walla Union Bulletin.

16. On _____, 2013, the Walla Walla County Joint Development Agency issued a SEPA determination of non-significance.

B. Conclusions of Law:

1. Moratoriums and interim zoning enacted under RCW 36.70A.390 are methods by which local governments may preserve the status quo so that new plans and regulations will not be rendered moot by intervening development.

2. The County has the authority to establish a moratorium and interim zoning, and the County must adopt a moratorium concerning the filing, acceptance, and processing of new applications for project permits for the establishment of, or operation of, any facility, building or premises used for the production, processing or retailing of recreational marijuana, to protect the health, safety and welfare of the citizens of the County.

3. A moratorium and interim zoning to preserve the status quo is necessary, until the effects of the State Liquor Control Board's issuance of marijuana licenses can be reviewed, Federal law enforcement's response be considered and until the County can study, draft, hold public hearings and adopt the appropriate regulations to address these new uses.

4. RCW 69.51A.140 authorizes counties to adopt and enforce zoning requirements, business licensing requirements, and health and safety requirements, pertaining to the production, processing, or dispensing of marijuana or marijuana products outside of incorporated cities or towns.

5. The proposed moratorium and interim zoning is consistent with the County Comprehensive Plan:

a. This Ordinance will allow the County to review which zones can support these uses, ensuring that, if necessary, these uses will be located in urban areas that are able to support them, County Comprehensive Plan 5.1.1, RCW 36.70A.020(1).

b. This Ordinance will allow the County to determine, if necessary, which types of marijuana-oriented businesses should be considered industrial uses, and allow the County to determine how to locate those uses in areas where environmental impacts and other hazards can be controlled and separated from other incompatible land uses, Comprehensive Plan Land Use Policy 25, Land Use Policy 27.

c. This Ordinance will allow the County to ensure that such uses will not be sited in rural or agricultural zones, if the uses are determined to be inconsistent with a rural or agrarian atmosphere, County Wide Planning Policy 10.7.

d. This Ordinance will allow the County to review the impact that these uses may have on County law enforcement services, and ensure that public spending priorities for County services within rural areas are to maintain or upgrade services at rural level standards to existing, not new, development, Policy RL-13.

e. This Ordinance will allow the County to review the impact that these uses may have on agriculturally-designated land, and ensure that these uses are sited in a manner that reduces conflict with productive farmland, Policy RL-43.

6. The proposed moratorium and interim zoning meets a definable public need: to maintain the status quo. Maintaining the status quo will allow the County to evaluate where and how these new uses should be allowed. Maintaining the status quo will also ensure that existing land uses, including residential, commercial, industrial, agricultural and natural resource uses are not negatively impacted by these new uses. Maintaining the status quo will allow the County to determine, in a more detailed fashion than the Liquor Control Board, what environmental impacts may be caused by these new uses and the appropriate measures to mitigate such impacts. Finally, maintaining the status quo will allow the County to review how the new uses conflict with Federal Law, and ensure that the County is not assisting in any violation of Federal Law.

7. The proposed moratorium and interim zoning is in the long term interest of the County, as it ensures that, to the extent these uses are to be allowed in the unincorporated areas of Walla Walla County, the uses are sited appropriately.

Section II. The following definitions, moratorium, and interim zoning are enacted within the County in locations outside of the corporate limits of any city or town:

A. Marijuana Definitions.

1. “Cannabis or Marijuana” means all parts of the plant Cannabis, whether growing or not, with a THC concentration greater than 0.3 percent on a dry weight basis; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin. For the purposes of this Ordinance, “cannabis” or “marijuana” does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, except the resin extracted therefrom, fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.
2. “Marijuana processor” means a person licensed by the State Liquor Control Board to process marijuana into useable marijuana and marijuana-infused products, package and label usable marijuana and marijuana-infused products for sale in retail outlets, and sell usable marijuana and marijuana-infused products as wholesale to marijuana retailers.
3. “Marijuana producer” means a person licensed by the State Liquor Control Board to produce and sell marijuana at wholesale to marijuana processors and other marijuana producers.
4. “Marijuana-infused products” means products that contain marijuana or marijuana extracts and are intended for human use. The term “marijuana-infused products” does not include useable marijuana.
5. “Marijuana retailer” means a person licensed by the State Liquor Control Board to sell usable marijuana and marijuana-infused products in a retail outlet.
6. “Retail outlet” means a location licensed by the State Liquor Control Board for the retail sale of useable marijuana and marijuana-infused products.
7. “Usable marijuana” means dried marijuana flowers. The term “usable marijuana” does not include marijuana-infused products.
8. “Project permit” or “project permit application” means any land use or environmental permit or license required from Walla Walla County or the

Walla Walla Joint Community Development Agency, acting as Walla Walla County's agent, for a project action, including but not limited to building permits, subdivisions, binding site plans, planned unit developments, conditional uses, shoreline substantial development permits, site plan review, permits or approvals required by critical area ordinances, site-specific rezones authorized by a comprehensive plan or subarea plan. For the purposes of this Ordinance, permits and licenses issued by the Walla Walla County Health Department and the Walla Walla County Public Works Department are included in this definition.

B: Moratorium and interim zoning regulation.

1. Any project permit for a structure or use/operation of property for the use by a marijuana producer for marijuana production activities shall not be accepted nor granted during the pendency of this moratorium and interim zoning Ordinance. All such applications shall be rejected and returned to the applicant.

2. Any project permit for a structure or use/operation of property for the use by a marijuana processor for marijuana processing activities shall not be accepted nor granted during the pendency of this moratorium and interim zoning Ordinance. All such applications shall be rejected and returned to the applicant.

3. Any project permit for a structure or use/operation of property for the use by a marijuana retailer for marijuana retailing activities shall not be accepted nor granted during the pendency of this moratorium/ interim zoning Ordinance. All such applications shall be rejected and returned to the applicant.

4. Marijuana production, marijuana processing and marijuana retailing shall not be considered permitted or allowed uses during the pendency of this moratorium/interim zoning Ordinance.

Section IV. Purpose. The purpose of this moratorium and interim zoning Ordinance is to allow the County adequate time to study the secondary land use impacts associated with the location and siting of structures and uses in which marijuana production, marijuana processing or marijuana retailing may take place. In addition, the moratorium will allow the County adequate time to study the implementation of I-502, and to review any responses from Federal law enforcement. The County's goal is to ultimately draft zoning and other possible regulations to address such developments and uses, to hold public hearings on such draft regulations and to adopt such regulations.

Section V. Duration of Moratorium and interim zoning. This moratorium and interim zoning Ordinance shall be in effect for twelve (12) months, beginning on September 3, 2013 and ending on September 2, 2014, unless an ordinance is adopted

rescinding the moratorium and interim zoning. This moratorium and interim zoning may be extended by the Board of County Commissioners following a public hearing prior to such extension.

Section VI. Work Plan. During the twelve-month period, the County will study the issues concerning the establishment and operation of producing, processing and retailing facilities allowed under I-502.

Section VII. Declaration of Emergency. The Board of County Commissioners hereby declares that an emergency exists necessitating that this Ordinance take effect immediately upon passage by the Board, and that the same is not subject to a referendum (RCW 36.70A.390). This Ordinance is necessary to ensure that marijuana uses, to the extent that they are allowed in the unincorporated areas of the County, are sited appropriately. The interim requirements must be imposed as an emergency measure to protect the public health, safety and welfare.

Section VIII. Effective Date. This Ordinance shall take effect and be in full force and effect immediately upon its adoption.

Section IX. Conflict with other WWCC Provisions. If the provisions of this Ordinance are found to be inconsistent with other provisions of the Walla Walla County Code, this Ordinance shall control.

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

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 ____ day of September, 2013.

Approved this ____ Day of September, 2013

Perry L. Dozier, Chairman, District 2

James K. Johnson, Commissioner, District 1

Gregory A. Tompkins, Commissioner, District 3

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

Attest:

Connie R. Vinti, Clerk of the Board

Approved as to form

Jesse D. Nolte
Deputy Prosecuting Attorney