An Interim Ordinance Adopting a Moratorium on Recreational and Medical Marijuana Facilities in Specified Zones

Whereas state law establishes dual systems of largely-unregulated medical marijuana and heavily regulated recreational marijuana;

Whereas Section 1102 provides that a county may adopt zoning requirements, business licensing requirements, health and safety requirements, and business taxes as those requirements relate to the production, processing, or dispensing of medical cannabis;

Whereas RCW 69.51A.140 provides that a county may adopt zoning requirements, business licensing requirements, health and safety requirements, and business taxes as those requirements relate to the production, processing, or dispensing of medical marijuana;

Whereas the State Attorney General has issued a formal opinion (AGO 2014 No. 2) advising that licenses for recreational marijuana production, processing, or retail facilities issued by the State Liquor Control Board do not preempt a county's ability to regulate those uses through zoning;

Whereas Skagit County considers the outdoor growing of marijuana to constitute "agriculture" for the purpose of application of the County zoning code and therefore has no specific zoning requirements that govern the siting of outdoor marijuana production facilities;

Whereas County residents have expressed concern about the real and potential effects of marijuana facilities on neighboring properties and neighborhoods and the rural character of rural residential zones;

Whereas other jurisdictions, including cities in Skagit County, have from time to time adopted moratoria or other interim development regulations to prohibit or manage the production, processing, or sale of medical or recreational marijuana;

Whereas federal law, as set forth in 21 USC § 841(a), makes it illegal to manufacture, distribute, or possess with intent to distribute any controlled substance, and pursuant to 21 USC § 812, marijuana is a Schedule I controlled substance;

Whereas the Division 1 Court of Appeals, in *Cannabis Action Coalition v. City of Kent* (2014), has held that neither medical marijuana nor collective gardens have been legalized under state law;

Whereas pursuant to the Growth Management Act, RCW Chapter 36.70A, the Skagit County Board of Commissioners has adopted the Skagit County Comprehensive Plan and Title 14, the Unified Development Code, for all unincorporated areas of Skagit County;

Whereas RCW 36.70A.390 and RCW 36.70.795 authorize the County Commissioners to adopt a moratorium, interim zoning ordinance, or interim official control without notice and public hearing, provided that the County holds a public hearing within 60 days after the adoption of the moratorium, interim zoning ordinance, or interim official control and adopts findings of fact justifying the action;

Whereas an interim ordinance adopted under RCW 36.70A.390 and RCW 36.70.795 may be effective for not longer than six months, but may be effective for up to one year if a work plan is developed for related studies providing for such a longer period;

Whereas a moratorium is a recognized technique to avoid a rush for permits whenever a community decides to change its planning ordinances;

Now Therefore Be It Ordained:

Section 1. Findings of Fact. The Board of Commissioners adopts the following findings of fact:

(a) The above recitals are incorporated as findings of fact.

(b) An emergency exists and the immediate adoption of the moratorium imposed by this ordinance is necessary for the protection of the public health, safety, property, and peace.

(c) The County needs to develop permanent regulations for these uses in the interest of protecting public health and safety, and it is in the public interest to provide adequate time to evaluate the best alternatives and the potential effects of these uses on neighboring properties and the community as a whole.

(d) The Legislature is expected to amend state law in the next legislative session to harmonize the medical marijuana statute with the recreational statute (I-502) and make other changes to the marijuana statutes to comply with directives from the U.S. Department of Justice.

(e) This ordinance is exempt from the public participation requirements of the Growth Management Act, subject to the provisions of RCW 36.70A.390.

(f) This action is taken consistent with the State Environmental Policy Act provisions at WAC 197-11-880 regarding emergency actions.

Section 2. Moratorium.

(a) The Board of Commissioners hereby declares a temporary moratorium prohibiting the permitting, establishment, or maintenance of:

i. any marijuana production or processing facility in the following zones: Rural Intermediate, Rural Reserve, Rural Business, Rural Center, Rural Resource-NRL, Rural Village Commercial, Bayview Ridge Residential, or Hamilton Residential;

ii. any medical marijuana dispensary or collective garden in any zone.

(b) Any marijuana production or processing facility, or associated fences, must be set back at least 250 feet from any property line of any parcel not owned by the facility operator.

(c) For the purpose of this ordinance, "medical marijuana dispensary" means any land use that involves the sale or provision of medical marijuana, other than a collective garden. The term "collective garden" has the same meaning as in RCW 69.51A.085. "Marijuana production or processing facility" includes, but is not limited to, any marijuana production or processing facility licensed by the State Liquor Control Board.

Section 3. Work Plan.

(a) Public Hearing. Pursuant to RCW 36.70A.390 and 36.70.795, the Board of Skagit County Commissioners will hold a public hearing on Tuesday, January 6, at 8:30 am in the Commissioners Hearing Room, 1800 Continental Place, Mount Vernon, Washington.

(b) The Planning & Development Services Department is hereby directed to work with the Skagit County Prosecutor's Office and Sheriff's Office to develop draft regulations regarding marijuana dispensaries, collective gardens, or production, processing, or sales facilities for expected adoption through the legislative process defined in SCC 14.08 before the expiration of this ordinance.

(c) The planning process should address such issues as the appropriate distance of these uses from schools, daycare facilities, public parks, other public facilities, and other dispensaries or collective gardens; the impacts associated with odor and lighting; appropriate screening and other, similar development regulations; and an analysis of the potential secondary impacts associated with these uses.

(d) Staff is directed to review and consider the experiences of other jurisdictions dealing with similar situations.

Section 4. Effective Date — Vesting — Severability.

(a) This amendment is an interim ordinance, takes effect immediately upon passage by the Board of County Commissioners, and with adoption of the abovementioned work plan, is effective for one year.

(b) This ordinance does not apply to any uses legally established, permits issued, or applications vested, before the effective date of this ordinance. Pursuant to Skagit County Code 14.02.050, an application vests when the application is deemed complete pursuant to Skagit County Code 14.06.090.

(c) If any section, sentence, clause, or phrase of this ordinance is held invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality will not affect the validity or constitutionality of any other section, sentence, clause, or phrase of this ordinance.

Witness Our Hands and the Official Seal of Our Office this 15th day of December, 2014.

Board of County Commissioners
Skagit County, Washington

Ron Wesen, Chair

Kenneth A. Dahlstedt, Commissioner

Sharon D. Dillon, Commissioner

SKAGIT COUNTY COMMISSIONERS SEAL COURT STATE OF WASHINGTON

ATTEST:

Clerk of the Board

APPROVED AS TO CONTENT:

Dale Pernula, Director
Planning & Development Services

APPROVED AS TO FORM:

Ryan Walters, Civil Deputy
Skagit County Prosecutor's Office