An Interim Ordinance Repealing Ordinance O20140009 and Adopting Revised Interim Regulations Regarding Marijuana Facilities in Specified Zones

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

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;

Whereas the Board adopted Ordinance O20140008 on December 15, 2014, creating a moratorium in certain zones and adopting a 250-foot setback in other zones;

Whereas the Board adopted Ordinance O20140009 on December 22, 2014, replacing Ordinance O20140008 with modified rules for locating marijuana facilities;

Now Therefore Be It Ordained:

Section 1. Findings of Fact. Having considered the public comments on interim ordinance O20140009, 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.

(g) The Board desires to allow uses that may have been burdened or prohibited by interim ordinance O20140009 to move forward where they will not have significant negative impacts on neighboring properties.

(h) Transparent structures and security fencing are likely to have a more significant impact on neighboring residences than opaque buildings due to lighting, odor, aesthetics, and noise.

(i) Marijuana growing and processing produces potentially significant odors.

(j) Marijuana production and processing facilities are incompatible with the rural landscape and rural residential communities.

(k) Marijuana processing involving hazardous chemicals creates a potential explosion hazard, even when conducted in a closed loop system, especially when leaks may not be easily detectable.

(l) Marijuana production should not be allowed on Guemes Island due to the limited aquifer and possibility of groundwater contamination from fertilizer, pesticides, and waste.

(m) Marijuana facilities create a potential for increased vehicle traffic.

Section 2. Ordinance O20140009 is repealed.

Section 3. Interim Development Regulations.

(a) The outdoor growing of marijuana in any zone is prohibited.

(b) Any facility for the production, processing, storage, retail sale, or other provision of marijuana that does not hold a current license from the State Liquor Control Board is prohibited, but may be permitted contingent on receiving such a license.

(c) Marijuana production, processing, and retail facilities are allowed only where described in the table below.

Zone	*Retail*	*Production, processing, or both in an **Opaque** Structure*	*Production, processing, or both in a **Transparent** Structure*
Agricultural—Natural Resource Lands (Ag-NRL)	X	P, only in structures existing as of 1/1/2014	HE, only in structures existing as of 1/1/2014
Bayview Ridge Light Industrial (BR-LI)	X	P	P; HE when within 1000 ft of a residential zone
Bayview Ridge Heavy Industrial (BR-HI)	X	P	P
Hamilton Industrial (H-I)	X	P	P
Natural Resource Industrial (NRI)	X	P	P
Rural Business (RB)	P	X	X
Rural Center (RC)	P	X	X
Rural Freeway Service (RFS)	P	X	X
Rural Resource—Natural Resource Lands (RRc-NRL)	X	P; except prohibited on Guemes Island	AD; except prohibited on Guemes Island
Rural Village Commercial (RVC)	P	AD	X
Urban Reserve Commercial-Industrial (URC-I)	P	P	HE

P = Permitted; AD= Administrative Special Use Permit; HE = Hearing Examiner Special Use Permit; X = Prohibited

(d) All marijuana production and processing facilities must employ ventilation systems such that no odors from the production or processing are detectable off the premises.

(e) Any marijuana facility that employs security cameras must aim those cameras so as to view only the facility property, not public rights-of-way or neighboring properties.

(f) A marijuana processing facility may use hazardous or flammable solvents or gasses for processing, but only in a professional-grade closed-loop extraction system that is designed to recover the chemicals and that is labeled for such use by the manufacturer. In Ag-NRL, a marijuana processing facility may not use any hazardous or flammable solvents or gases for processing.

(g) When required, special use permits for marijuana facilities must address impacts on surrounding properties, including but not limited to the appropriate distance of the facility from residences, schools, daycare facilities, public parks, other public facilities, and other marijuana facilities and include appropriate controls on odor; screening or other requirements to avoid lighting impacts; protections against security cameras infringing on neighbors' privacy; controls on hazardous processing methods; and mitigation of other impacts.

(h) In municipal UGAs where a municipality's development regulations apply (i.e., A-UD, MV-UD, and L-UD), marijuana facilities must comply with the municipality's development regulations instead of these regulations.

Section 4. Work Plan.

(a) Planning Commission review. The Department is directed to prepare a development regulation amendment proposal consistent with this interim ordinance, and make it available for public comment no later than March 19, 2015. The Planning Commission is directed to hold a public hearing on the proposal and provide to the Department its recommendation no later than April 21, 2015.

(b) Board Public Hearing. Pursuant to RCW 36.70A.390 and 36.70.795, the Board of Skagit County Commissioners will hold a public hearing on this interim ordinance within 60 days of adoption if permanent rules are not adopted by that date.

Section 5. Effective Date — Vesting — Severability.

(a) This amendment is an interim ordinance, and takes effect on March 5, 2015. With adoption of the work plan above, this ordinance 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 3rd day of March, 2015.

Board of County Commissioners
Skagit County, Washington

Kenneth A. Dahlstedt, Chair

Lisa Janicki, Commissioner

Ron Wesen, Commissioner

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