

**BOARD OF YAKIMA COUNTY COMMISSIONERS
ORDINANCE 4-2014**

**IN THE MATTER OF AMENDING YAKIMA COUNTY CODE TITLE 15 AND TITLE
15A PROHIBITING THE PRODUCTION, PROCESSING AND RETAIL SALES OF
RECREATIONAL MARIJUANA IN ALL YAKIMA COUNTY ZONING DISTRICTS**

WHEREAS, RCW 36.70A.130(4) requires that Yakima County, a fully planning county, shall update its comprehensive plan and development regulations as necessary, to reflect local needs, new data and current laws; and,

WHEREAS, under RCW 36.70A.130, the plan and development regulations are subject to continuing review and evaluation; and,

WHEREAS, as part of its comprehensive plan and development regulations update process the County has established a public participation program through YCC 16B, which sets forth requirements for ensuring adequate public notification and opportunities for comment and participation in the amendment process; and,

WHEREAS, on November 6 2012 the voters of the State of Washington approved Initiative Measure No. 502, now codified within Chapters 69.50, 46.04, 46.20, 46.21 and 46.61 of the Revised Code of Washington, which provisions (1) decriminalized possession and use of certain amounts of marijuana and marijuana paraphernalia; (2) amended state laws pertaining to driving under the influence of intoxicants to including driving under the influence of marijuana; and (3) authorized the promulgation of regulations and issuance of licenses by the Washington State Liquor Control Board (WSLCB) for the production, processing and retailing of marijuana; and

WHEREAS, in the same election the voters in Yakima County *disapproved*, by a substantial percentage of votes cast -appox.58%- Initiative 502; and

WHEREAS, Congress passed the *Comprehensive Drug Abuse Prevention and Control Act of 1970*, Pub.L No. 91-513, 84 Stat. 1236, to create a comprehensive drug enforcement regime called the Controlled Substances Act, 21 U.S.C. §801-971. Under this law Congress established five 'schedules' of controlled substances. Controlled substances are placed in specific schedules based upon their potential for abuse, their accepted medical use for medical conditions, and the physical and psychological consequences for abuse of the particular substance. *See* 21 U.S.C. §812(b); and

WHEREAS, marijuana is currently listed as a "Schedule I" controlled substance, 21 U.S.C. § 812(c), Schedule I (c)(10). For a substance to be designated a Schedule I controlled substance, it must be found: (1) that the substance "has a high potential for abuse";(2) that the

substance “has no currently accepted medical use in treatment in the United States”; and (3) that “[t]here is a lack of accepted safety for use of the drug or other substances under medical supervision.” 21 U.S.C. §812(b)(1). The Controlled Substance Act sets forth procedures by which the schedules may be modified. *See* 21.U.S.C. § 811(a); and

WHEREAS, under the controlled substance act it is unlawful to knowingly or intentionally “manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance,” except as otherwise provided in the statute. 21 U.S.C. §841(A)(1). Possession of a controlled substances, except as authorized under the Controlled Substance Act is also unlawful; and

WHEREAS, the United States Supreme Court has held in *Gonzales v. Raich*, 545 U.S. 1, 125 S.Ct. 2195, 162 L.Ed. 2d 1 (2005), that Congress was within its rights and powers under the Commerce Clause to regulate marijuana as a Schedule I controlled substance pursuant to the Controlled Substances Act, and that, under the Supremacy Clause of the U.S. Constitution, the federal controlled substances act will prevail over any conflicting state law; and

WHEREAS, WAC 314-55-020(11) promulgated by the WSLCB under the authority of I-502 describes the license permit process and includes the following limitation:

(11) The issuance or approval of a license shall not be construed as a license for, or an approval of, any violations of local rules or ordinances including, but not limited to: Building and fire codes, zoning ordinances, and business licensing requirements; and

WHEREAS, pursuant to Article 11, § 11 of the state Constitution, the general police powers granted to cities empower and authorize Yakima 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 (*See Cannabis Action Coal. v. City of Kent*, 322 P.3d 1246; 2014 Wash. App. LEXIS 750 (Div. I. Wash. Ct. App. Mar. 31, 2014)).

WHEREAS, one of the primary purposes of the Growth Management Act, codified in Yakima County’s laws as YCC Title 16A – 16C, is to empower cities planning under the GMA to develop and adopt land use controls reflecting the local needs of the community. As provided in RCW 36.70A.010: “It is in the public interest that citizens, communities, local governments and the private sector cooperate and coordinate with one another in comprehensive land use planning;” and

WHEREAS, On January 16, 2014 the Washington State Attorney General issued an Opinion that included its finding that I-502 did not preempt local jurisdictions from regulating Marijuana enterprises as an appropriate exercise of their constitutional police powers (AGO 2014-2, page 8); and

WHEREAS, on September 3, 2013 the Board of Yakima County Commissioners adopted Resolution 300-2013 that established a six (6) month moratorium on the acceptance and processing of any County permits or approvals for I-502 authorized marijuana activities, including a prohibition on all production, processing, and/or retail sales of recreational marijuana within the unincorporated areas of Yakima County under county jurisdiction, as authorized by RCW 36.70.795; and,

WHEREAS, on October 29, 2013 the Board of Yakima County Commissioners held a duly noticed public hearing to hear public testimony and accept evidence on the moratorium and any future revisions pertaining to the growing, processing or sales of recreational marijuana; and,

WHEREAS, the Board of Yakima County Commissioners adopted Resolution 31-2014 on January 21, 2014 directing Yakima County staff to prepare amendments to Titles 15 and 15A of the Yakima County zoning codes to prohibit the production, processing and sales of Marijuana within unincorporated Yakima County; and,

WHEREAS, the Board of Yakima County Commissioners adopted further findings of fact and conclusions of law to support an extension of the moratorium in Resolution No. 70-2014, dated February 18, 2014; and

WHEREAS, a public hearing was held on February 18, 2014 at the Council Chamber of the Yakima City Hall to consider extending the moratorium established by Yakima County Resolution 300-2013 and at this public hearing the Board of Yakima County Commissioners heard evidence and public testimony regarding the need for extending the moratorium. The Board of Yakima County Commissioners adopted the findings of fact in support of Resolution 75-2014 and affirmed the continuation of Resolution 300-2013 for a period of six months commencing on March 3, 2014; or earlier upon adoption and activation of any amendments to current County codes; and,

WHEREAS, Yakima County Planning Division submitted for Planning Commission consideration proposed text amendments to YCC Title 15 - Zoning Ordinance and YCC Title 15A – Yakima County Urban Growth Area Zoning Ordinance regarding producing, processing, and retail sales of recreational marijuana; and,

WHEREAS, Yakima County staff prepared a SEPA Threshold Determination of Non-Significance which analyzed the environmental impacts of all proposed text amendments and issued it on March 21, 2014; and,

WHEREAS, the Planning Commission conducted a properly noticed public hearing on March 26, 2014 at the Holiday Inn Conference Room to hear testimony on the proposed text

amendments. The Planning Commission received and accepted two written comments. Minutes of the hearings were taken and are on file; and,

WHEREAS, the Planning Commission held a properly noticed deliberation meeting on the proposed text amendments to Title 15 – Yakima County Zoning Ordinance and Title 15A – Yakima County Urban Growth Area Zoning Ordinance related to recreational marijuana on April 9, 2014; and,

WHEREAS, after proper notice of the agenda the Planning Commission held a special meeting to consider and sign the written Findings and Recommendation on the proposed language on April 16, 2014 adopted findings of fact and conclusions of law, which Findings of Fact are incorporated herein, and whose Conclusions of Law are of record; and,

WHEREAS, the Board of County Commissioner's held a properly noticed public hearing on May 27, 2014 at the Holiday Inn conference room and heard testimony on the proposed text amendments. Minutes for the hearing were taken and are on file; and,

WHEREAS, the Board of County Commissioner's held a properly noticed deliberation meeting on the proposed text amendments to Title 15 – Yakima County Zoning Ordinance and Title 15A – Yakima County Urban Growth Area Zoning Ordinance related to recreation marijuana on June 10, 2014 where it considered the public testimony and evidence presented, including the Planning Commission's Findings of Fact and Conclusions of Law;

WHEREAS, the Board of Yakima County Commissioners finds and determines that the prohibition of marijuana production, processing and retailing as defined by I-502 and regulations promulgated thereunder is not in conflict with provisions of the Controlled Substance Act; and

WHEREAS, the Board of County Commissioners finds and determines that the prohibition of marijuana production, processing and retail uses is within the county's regulatory authority and this action is the only effective means to protect residential districts, recreational facilities, families and children within Yakima County's jurisdiction; and

WHEREAS, the Board of County Commissioners for Yakima County finds and determines that approval of such amendments prohibiting the production, processing and retail sale of marijuana in Yakima County is supported by the will of the electorate of Yakima County as expressed in their vote against I-502; is supported by the case law and the Opinion of the Washington State Attorney General; and is in the best interest of the residents of Yakima County and will promote the general health, safety and welfare; now, therefore

BE IT HEREBY ORDAINED by the Board of Yakima County Commissioners that based on the above Findings and Conclusions the following amendments to Yakima County laws, as listed

in Section 1 the proposed amendments to YCC 15.18.010(4)(a) and YCC 15A.04.020(6)(a) listed below in Section 2 and 3, be executed by the Board:

Section 1. Findings. The Board of Yakima County Commissioners (the Board) finds that all RCW 36.70A (the Growth Management Act or GMA) and YCC Title 16B prerequisites for the review and evaluation of the changes to development regulations, as well as the minimum requirements for ensuring adequate public notification and opportunities for comment and participation in the amendment process, have been met. The Board makes the following findings:

- A. Planning Commission Recommendation. The Board considered the Planning Commission's Findings of Fact and Recommendation (Exhibit 1 attached hereto) and all exhibits from their March 26, 2014 open record hearing. The Board adopts the Planning Division Draft Ordinance as outlined in Section 2 and Section 3 below.
- B. State Environmental Policy Act (SEPA). The SEPA Responsible Official has reviewed the potential adverse environmental impacts of the proposed amendments in accordance with the provisions of YCC Title 16, culminating in a Final Determination of Non-Significance issued on March 21, 2014. The Board finds that environmental review is complete and adequate.

Section 2. Chapter 15.18 of the Yakima County Zoning Ordinance is hereby amended by adding subsection (4) to section 15.18.010 as follows:

15.18.010 Designations.

4) Prohibited Uses

(a) Production, Processing and Retailing of Marijuana Prohibited.

Production, processing and retail sales of marijuana and marijuana-infused products, all as defined in Initiative Measure No. 502, as codified in the Revised Code of Washington Chapter 69, and implementing regulations in Chapter 314-55 of the Washington Administrative Code, are each prohibited and not allowed in any zone within the unincorporated areas of Yakima County.

Section 3. Chapter 15A.04 of the Yakima County Urban Growth Area Zoning Ordinance is hereby amended by adding subsection (6) to 15A.04.020 as follows:

15A.04.020 Land Use Classification System.

(6) Prohibited Uses

(a) Production, Processing and Retailing of Marijuana Prohibited. Production, processing and retail sales of marijuana and marijuana-infused products, all as defined in Initiative Measure No. 502, as codified in the Revised Code of Washington Chapter 69, and implementing regulations in Chapter 314-55 of the

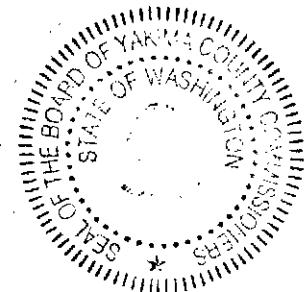
Washington Administrative Code, are each prohibited and not allowed in any zone within the jurisdiction of Title 15A.

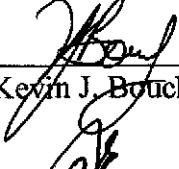
Section 4. Except as amended herein, Title 15 (Yakima County Zoning Ordinance) and Title 15A (Yakima County Urban Growth Area Zoning Ordinance) shall remain unchanged.

Section 5. The moratorium adopted and imposed on September 3, 2013 pursuant to Resolution No. 300-2013, and extended on February 18, 2014 pursuant to Resolution No. 75-2014, shall terminate upon the date all provisions of the this ordinance becomes effective in accordance with the provisions of Section 6 below.

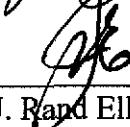
Section 6. This ordinance shall be in full force and effect immediately after its passage, approval, and publication as provided by law.

DONE this 17th day of June, 2014

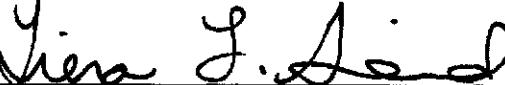




Kevin J. Bouchey, Chairman



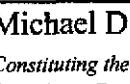
J. Rand Elliott, Commissioner



Attest: Tiera L. Girard

Clerk of the Board

Excused



Michael D. Leita, Commissioner
*Constituting the Board of County Commissioners
for Yakima County, Washington*