**ORDINANCE NO. 2014-05-07**

An Ordinance adopting land use regulations, and establishing prohibitions on the location of marijuana-related facilities.

WHEREAS, Initiative 502 was passed by the voters of the State of Washington in November, 2012, providing a framework under which marijuana producers, processors and retailers can become licensed by the State of Washington; and

WHEREAS, under Initiative 502, the Washington State Liquor Control Board ("LCB") adopted rules (Chapter 314-55 WAC) governing the licensing and operation of marijuana producers, processors and retailers that took effect on November 16, 2013; and

WHEREAS, the United States Department of Justice in a letter to the Commissioners of Clark County, Washington, dated January 17, 2012, stated that "Congress has determined that marijuana is a schedule I controlled substance and, as such, growing, distributing and possessing marijuana in any capacity, other than as part of a federally-authorized research program, is a violation of federal law, regardless of state laws permitting such activities"; and

WHEREAS, the Department of Justice has subsequently clarified its position indicating it would not assert preemption of Washington's decriminalization of marijuana; and

WHEREAS, the Board of County Commissioners (Board) adopted moratoria on the acceptance of any land use applications for marijuana facilities with Resolutions 2013-08-04, 2013-10-06, and 2014-02-17; and

WHEREAS, the Board directed county staff to engage the community in drafting proposed code language for the siting of marijuana-related facilities; and



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WHEREAS, the Washington Attorney General issued an opinion (AGO 2014 No. 2) on January 16, 2014 that nothing in RCW 69.50 prevents local governments from prohibiting marijuana-related facilities; and

WHEREAS, Clark County Planning Commission held a duly advertised public hearing on March 20, 2014 to review draft code language; and

WHEREAS, the Board held a duly advertised public hearing on May 27, 2014 to review the recommendations of the Planning Commission; Now, Therefore,

BE IT ORDERED, RESOLVED AND DECREED BY THE BOARD OF COUNTY COMMISSIONERS OF CLARK COUNTY, STATE OF WASHINGTON, AS FOLLOWS:

**Section 1. Amendatory.** CCC Section 40.100.070, as last amended by Ord. 2012-07-15, is amended as follows:

## 40.100.070 DEFINITIONS

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| Agriculture, agriculture uses or agricultural activities | "Agriculture," "agriculture uses" or "agricultural activities" means the use of the land for agricultural purposes, including, but not limited to, farming, dairying, pasturage, agriculture, horticulture, floriculture, viticulture and wineries, apiaries, and animal and poultry husbandry, and the necessary accessory uses and structures; provided, however, that the construction and operation of any such accessory use or structure shall be incidental to that of normal agricultural activities; and provided further, that the above uses shall not include slaughterhouses and meat packing or commercial feeding of animals. Marijuana production and processing do not, for the purposes of this zoning title, meet the definition of agriculture, agricultural uses or agricultural activities, and may only occur in accordance with Chapter 314-55 WAC and Section 40.260.115. |

**Section 2. New.** A new section CCC Section 40.260.115 is hereby adopted that addresses the siting of marijuana-related facilities under I-502, as follows:

## 40.260.115 MARIJUANA FACILITIES

A. Purpose.

The purpose of this section is to implement RCW 69.50, the Washington Uniform Controlled Substances Act, and Chapter 314-55 WAC, which address the producing, processing, and retailing of marijuana. This section addresses the facilities for such uses by establishing criteria to adequately separate such facilities from schools, community centers, parks, licensed daycare facilities, and other such facilities, and to establish minimum performance standards to address public health and safety impacts from such facilities.

B. Applicability.

1. This ordinance shall apply to all unincorporated areas of the county.
2. The location restrictions and special standards in this section apply to any facility that:
   a. is a producer of marijuana as defined in Chapter 314-55-075 WAC;
   b. is a processor of marijuana as defined in Chapter 314-55-077 WAC; or
   c. is a retailer of marijuana as defined in Chapter 314-55-079 WAC.
3. This section does not pertain in any respect to medical marijuana collective gardens.
4. Recreational marijuana-related permits will not be approved until such time that marijuana is no longer listed as a federally controlled substance in accordance with 21 U.S.C Sec. 812(c).

C. Definitions.

For purposes of this section, the following definitions shall apply.

| | |
|---|---|
| Marijuana processor | "Marijuana processor" means a facility licensed by the Washington Liquor Control Board to transform marijuana into useable marijuana and marijuana-infused products, package and label useable marijuana and marijuana-infused products for sale in retail outlets, and sell useable marijuana and marijuana-infused products at wholesale to marijuana retailers. Processors are classified as follows:<br>• Processor I, a facility limited to drying, curing, trimming, and packaging; and<br>• Processor II, a facility that extracts concentrates, infuses products, or involves mechanical and/or |

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| | chemical processing in addition to drying, curing, trimming, and packaging. |
| Marijuana producer | "Marijuana producer" means a facility licensed by the Washington Liquor Control Board for the growing and sale at wholesale of marijuana to marijuana processors and other marijuana producers. |
| Marijuana retailer | "Marijuana retailer" means a facility licensed by the Washington Liquor Control Board for the sale to consumers of useable marijuana and marijuana-infused products. |

D. Location Standards.

1. Subject to Section 40.260.115(D)(1)(d) below, marijuana facilities as defined in Section 40.260.115(C) may be sited, as follows:
   a. Marijuana production facilities may be allowed on legal parcels of at least 10 acres in size zoned AG-20 and FR-40, and on legal conforming parcels zoned IL, IH, and IR.
   b. Marijuana processing facilities may be allowed on legal parcels, as follows:
      (1) Processor I facilities, on legal conforming parcels zoned IL, IH, IR, and BP;
      (2) Processor I facilities on parcels of at least 10 acres in size zoned AG-20 and FR-40, but only as accessory to licensed production facilities; and
      (3) Processor II facilities, on parcels zoned IH, IL, IR, and BP.
   c. Marijuana retailing facilities may be allowed on legal conforming parcels zoned GC, C-3, and CR-2.
   d. No facilities are allowed within one thousand (1000) feet of the perimeter of the grounds of the following entities. The distance shall be measured as the shortest straight line distance from the property line of the proposed building/business location to the property line of the entities listed below:
      (1) Elementary or secondary school;
      (2) Public playground;
      (3) Recreation center or facility, including the Clark County Events Center;
      (4) Child care center;
      (5) Public park;
      (6) Public transit center;
      (7) Library;
      (8) Any game arcade where admission is not restricted to persons aged twenty-one (21) or older; or
      (9) Churches and religious facilities.

2. Where allowed, production and processing facilities may co-locate on the same parcel, if they otherwise meet the requirements of Chapter 314-55 WAC and this section.

E. Development Standards.
1. The requirements of Chapter 314-55 WAC are considered minimum standards for the purposes of this section.
2. Any facilities as described in Section 40.260.115(B)(2) shall be located entirely within an enclosed and secure structure with an engineered foundation, and shall be constructed in compliance with CCC Titles 14 (Building and Structures),15 (Fire Prevention), and 24 (Public Health).
3. There shall be no on-site display or sale of paraphernalia used for the consumption of cannabis.
4. Cannabis plants shall not be visible from the public right-of-way or any public place.
5. Signs.
   a. In accordance with RCW 69.50.357(3), licensed marijuana retailers shall not display any signage in a window, on a door, or on the outside of the premises of a retail outlet that is visible to the general public from a public right-of-way, other than a single sign no larger than one twelve (12) square feet identifying the retail outlet by the licensee's business or trade name.
   b. No signs for production and processing facilities are allowed.
6. Hours of operation for retailing facilities shall be between 8:00 a.m. and 8:00 p.m.
7. Measures shall be implemented to prevent adverse health and safety effects to nearby residents from odors, noise, noxious gases, light, smoke and security.
   a. Odors. Facilities shall not create odors or smoke that is objectionable to residents or employees of adjacent properties.
   b. Lighting. All lights used for security shall be shielded or positioned to prevent glare impacts to nearby properties.
   c. Noise. Maximum noise levels of Chapter 173-60-040 WAC shall not be exceeded.
   d. Security. Security measures shall include, at a minimum, the requirements of Chapter 314-55-083 WAC and CCC Title 14.
   e. Waste disposal. Waste materials generated from any facility must be disposed of in accordance with the plan filed as part of the license application.

F. Approval process.
Applications for production, processing, and retailing facilities shall be considered using a Type II process pursuant to Section 40.510.020.

G. Enforcement.

Violations of this chapter shall be subject to enforcement action as contained in Title 32, Enforcement.

**Section 3. Amendatory.** CCC Section 40.210.010, as last amended by Ord. 2012-12-23, is amended, as follows:

| Table 40.210.010-1. Uses | | | | | |
|---|---|---|---|---|---|
| | **FR-80** | **FR-40** | **AG-20** | **AG-WL** | **Special Standards** |
| 9. Other | | | | | |
| j. Temporary dwellings | P | P | P | X | 40.260. |
| k. Marijuana-related facilities | X | X | X | X | |

**Section 4. Amendatory.** CCC Section 40.210.020, as last amended by Ord. 2012-12-23, is amended, as follows:

| Table 40.210.020-1. Uses | | | | |
|---|---|---|---|---|
| | **R-20** | **R-10** | **R-5** | **Special Standards** |
| 8. Other. | | | | |
| g. Electric vehicle infrastructure | P | P | P | 40.260.075 |
| h. Marijuana-related facilities | X | X | X | |

**Section 5. Amendatory.** CCC Section 40.210.030, as last amended by Ord. 2012-07-03, is amended, as follows:

| Table 40.210.030-1. Uses | | | |
|---|---|---|---|
| | **RC-1** | **RC-2.5** | **Special Standards** |
| 8. Other. | | | |
| f. Electric vehicle infrastructure | P | P | 40.260.075 |

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|---|---|---|---|
| g. Marijuana-related facilities | X | X | |

**Section 6. Amendatory.** CCC Section 40.210.040, as last amended by Ord. 2012-12-14, is amended, as follows:

| Table 40.210.040-1. Uses | | | |
|---|---|---|---|
| | **UR-20 & UR-40** | **UR-10** | **Special Standards** |
| 8. Other. | | | |
| f. Electric vehicle infrastructure | P | P | 40.260.075 |
| g. Marijuana-related facilities | X | X | |

**Section 7. Amendatory.** CCC Section 40.210.050, as last amended by Ord. 2012-06-02, is amended, as follows:

| Table 40.210.050-1. Uses | | | |
|---|---|---|---|
| | **CR-1** | **CR-2** | **Special Standards** |
| 20. Other Uses. | | | |
| c. Solid waste handling and disposal sites | C[1] | C[1] | 40.260.200 |
| d. Marijuana-related facilities | X | X | |

**Section 8. Amendatory.** CCC Section 40.220.010, as last amended by Ord. 2012-12-13, is amended, as follows:

| Table 40.220.010-1. Uses | | | | | | |
|---|---|---|---|---|---|---|
| | **R1-20** | **R1-10** | **R1-7.5** | **R1-6** | **R1-5** | **Special Standards** |
| 8. Other. | | | | | | |
| f. Electric vehicle infrastructure | P | P | P | P | P | 40.260.075 |

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|---|---|---|---|---|---|---|
| g. Marijuana-related facilities | X | X | X | X | X | |

**Section 9. Amendatory.** CCC Section 40.220.020, as last amended by Ord. 2-12-06-02, is amended, as follows:

| Table 40.220.020-1. Uses | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | R-12 | R-18 | R-22 | R-30 | R-43 | OR-15 | OR-18 | OR-22 | OR-30 | OR-43 | Special Standards |
| 11. Other. | | | | | | | | | | | |
| g. Electric vehicle infrastructure | P | P | P | P | P | P | P | P | P | P | 40.260.075 |
| h. Marijuana-related facilities | X | X | X | X | X | X | X | X | X | X | |

**Section 10. Amendatory.** CCC Section 40.230.010, as last amended by Ord. 2012-07-03, is amended, as follows:

| Table 40.230.010-1. Uses | | | | |
|---|---|---|---|---|
| | C-2 | C-3 | GC | Special Standards |
| 21. Other Uses. | | | | |
| c. Solid waste handling and disposal sites | C | C | C | 40.260.200 |
| d. Marijuana-related facilities | X | X | X | |

**Section 11. Amendatory.** CCC Section 40.230.020, as last amended by Ord. 2012-06-02, is amended, as follows:

| Table 40.230.020-1. Uses[1] | | |
|---|---|---|
| | MX | Special Standards |
| 19. Other Uses. | | |
| c. Solid waste handling and disposal sites | X | |
| d. Marijuana-related facilities | X | |

**Section 12. Amendatory.** CCC Section 40.230.050, as last amended by Ord. 2012-06-02 is amended, as follows:

| Table 40.230.050-1. Uses | | |
|---|---|---|
| | U | Special Standards |
| 2. Other. | | |
| i. Agricultural market | P | |
| j. Marijuana-related facilities | X | |

**Section 13. Amendatory.** CCC Section 40.230.060, as last amended by Ord. 2012-06-02, is amended, as follows:

| Table 40.230.060-1. Uses | | |
|---|---|---|
| | A | Special Standards |
| 10. Other. | | |
| f. Electric vehicle infrastructure | P | 40.260.075 |
| g. Marijuana-related facilities | X | |
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**Section 14. Amendatory.** CCC Section 40.230.070, as last amended by Ord. 2012-12-23, is amended, as follows:

| Table 40.230.070-1. Uses | | | | |
|---|---|---|---|---|
| | UH-10 | UH-20 | UH-40 | Special Standards |
| 8. Other. | | | | |
| h. Storage yard for building materials, contractors' equipment and vehicles, house mover, delivery vehicles, transit storage, used equipment in operable condition and related materials | X | P[4, 5] | P[4, 5] | |
| i. Marijuana-related facilities | X | X | X | |

**Section 15. Amendatory.** CCC Section 40.230.085, as last amended by Ord. 2012-12-14, is amended, as follows:

| **Table 40.230.085-1. Uses.**<br>**2012 North American Industrial Classification System (NAICS)** | **IL** | **IH** | **IR** | **BP** |
|---|---|---|---|---|
| G. Other uses not listed as NAICS codes. | | | | |
| 4. Other Uses | | | | |
| e. Electric vehicle infrastructure | P | P | P | P |
| f. Marijuana-related facilities | X | X | X | X |

**Section 16. Severability.** If any section, sentence, clause or phrase of this Ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity of any other section, sentence, clause or phrase of this Ordinance.

**Section 17. Effective Date.** This ordinance shall take effect immediately upon its adoption.

**Section 18. Instructions to the clerk.**

The Clerk to the Board shall:

1. Record a copy of this ordinance with the Clark County Auditor.
2. Transmit a copy of this ordinance to the State Department of Commerce within ten days of its adoption.
3. Cause notice of adoption of this ordinance to be published forthwith pursuant to RCW 36.70A.290.

ADOPTED this 27th day of May, 2014.

BOARD OF COUNTY COMMISSIONERS
CLARK COUNTY, WASHINGTON

Attest:

Rebecca Fitter
Clerk to the Board

By Tom Mielke
Tom Mielke, Chair

Approved as to Form Only:
ANTHONY GOLIK
Prosecuting Attorney

By _____
David Madore, Commissioner

By _____
Christopher Horne, WSBA #12557
Chief Civil Deputy