

# TOWN OF EATONVILLE

## Agenda Staff Report

Agenda Item No.:	_____	Meeting Date:	<u>June 8, 2015</u>
Subject:	<u>Ordinance No. 2015-4 Extending A Moratorium On The Establishment, Location, Operation, Licensing, Or Maintenance Of Facilities, Businesses, Or Any Other Activities Involving The Production, Processing, Or Retail Sale Of Recreational Marijuana Or Marijuana-Infused Products</u>	Prepared by:	<u>Gregory A. Jacoby</u> <u>Town Attorney</u>
		Atty Routing No:	<u>031-13</u>
		Atty Review Date:	<u>May 20, 2015</u>

**Summary:** At the Town Council's meeting on December 8, 2014, the Council decided against adopting permanent recreational marijuana regulations and allowed the interim regulations to expire. As a result, the Town has no zoning or other restrictions regarding the establishment, location, or operation of recreational marijuana businesses within Town limits. Subsequently, at the December 22, 2014 meeting, the Council adopted a six month moratorium on the establishment, location, operation, licensing, or maintenance of facilities, businesses, or any other activities involving the production, processing, or retail sale of recreational marijuana or marijuana-infused products. The intent was to preserve the status quo and prevent any state-licensed marijuana business from operating in Eatonville during the six month period that the moratorium was in effect.

Extending the moratorium will allow the Town to continue to monitor the progress of legal challenges to I-502, which are still pending before the appellate courts and which will determine whether I-502 overrides local governments' preexisting authority to regulate or even ban local businesses, including recreational marijuana businesses, through zoning or otherwise. Extending the moratorium will also provide the Town with additional time to evaluate the zoning and land use implications of locating uses and facilities for the production, processing, and retail sale of recreational marijuana, and the associated impacts to the community.

Consistent with state law, a six month extension of the moratorium is proposed, which would expire December 22, 2015 unless earlier terminated by the Council or extended. State law also requires a public hearing, which was held earlier this evening.

Prior to voting whether to adopt Ordinance No. 2015-4, the Council should discuss whether they wish to amend the Ordinance in response to comments made during the public hearing.

**Recommendation:** Staff recommends waiving the second reading and adopting Ordinance No. 2015-4.

**Motion for consideration:** I move to waive second reading and to adopt Ordinance No. 2015-4 extending for six months a moratorium on the establishment, location, operation, licensing, or maintenance of facilities, businesses, or any other activities involving the production, processing, or retail sale of recreational marijuana or marijuana-infused products.

**Fiscal Impact:** None.

**Attachments:** Ordinance No. 2015-4.

# TOWN OF EATONVILLE

## Agenda Staff Report

Agenda Item No.:	_____	Meeting Date:	<u>June 8, 2015</u>
Subject:	<u>Public Hearing Regarding a Six Month Extension of a Moratorium on the Establishment, Location, Operation, Licensing, or Maintenance of Facilities, Businesses, or Any Other Activities Involving the Production, Processing, or Retail Sale of Recreational Marijuana or Marijuana-Infused Products</u>	Prepared by:	<u>Gregory A. Jacoby</u>
			<u>Town Attorney</u>
		Atty Routing No:	<u>031-13</u>
		Atty Review Date:	<u>May 20, 2015</u>

**Summary:** RCW 35.63.200 and RCW 36.70.390 require the Town to hold a properly noticed public hearing prior to extending a moratorium. The purpose of tonight's public hearing is to take public comment regarding the proposed extension of the moratorium on the establishment, operation or licensing of recreational marijuana businesses.

Public comment at a hearing is not limited to 3 minutes, although if there are many speakers, the Mayor, as the presiding officer, may ask speakers to be succinct in their comments and refrain from repeating statements made by earlier speakers.

Councilmembers should consider whether the public comments cause them to propose amending the moratorium ordinance and/or to add additional findings to the text of the ordinance.

**Recommendation:** Staff recommends the Mayor open the public hearing.

**ORDINANCE NO. 2015-4**

**AN ORDINANCE OF THE TOWN OF EATONVILLE, WASHINGTON, EXTENDING FOR SIX MONTHS A MORATORIUM ON THE ESTABLISHMENT, LOCATION, OPERATION, LICENSING, OR MAINTENANCE OF FACILITIES, BUSINESSES, OR ANY OTHER ACTIVITIES INVOLVING THE PRODUCTION, PROCESSING, OR RETAIL SALE OF RECREATIONAL MARIJUANA OR MARIJUANA-INFUSED PRODUCTS**

**WHEREAS**, in November of 2012, the Washington voters passed I-502, which directed the Washington State Liquor Control Board (LCB) to regulate recreational marijuana by licensing and taxing recreational marijuana producers, processors, and retailers; and

**WHEREAS**, in November 2013, after notice and comment, the LCB adopted final rules to address: the methods for producing, processing, and packaging recreational marijuana; security requirements for retail outlets, retail outlet locations, and hours of operation; labeling requirements; methods of transport of product throughout the state; taxing of marijuana-related activities; and the creation of a dedicated fund consisting of marijuana excise taxes, license fees, penalties, and other income; and

**WHEREAS**, shortly after adopting the Final Rules, the LCB began accepting license applications and in March 2014 began issuing licenses for recreational marijuana businesses; and

**WHEREAS**, on December 9, 2013, the Town Council held a duly noticed public hearing and passed Ordinance No. 2013-15 adopting interim regulations regarding recreational marijuana businesses in order to provide sufficient time for the Town to evaluate the State's implementation of regulations pursuant to Chapter 69.50 RCW and the siting and opening of marijuana businesses under I-502, as well as to provide basic guidance to prospective licensees; and

**WHEREAS**, on June 9, 2014, the Town Council adopted Ordinance No. 2014-3 extending the interim regulations for an additional six months, and those interim regulations expired on December 8, 2014; and

**WHEREAS**, in August and October 2014, Superior Courts in Pierce County and Chelan County ruled I-502 does not override local governments' preexisting authority to regulate local businesses, including recreational marijuana businesses, through zoning or otherwise, and at least one of these decisions has been appealed; and

**WHEREAS**, until the Washington State Supreme Court rules on the authority of local governments to prohibit recreational marijuana businesses there continues to be uncertainty and legal risk to the Town as to whether I-502 overrides local governments' preexisting authority to regulate local businesses, including recreational marijuana businesses, through zoning or otherwise; and

**WHEREAS**, in addition, the cultivation, possession, and distribution of marijuana has been and continues to be a violation of federal law through the Controlled Substances Act; and

**WHEREAS**, RCW 35.63.200 and RCW 36.70A.390 authorize a municipality to adopt, and subsequently extend, a moratorium for a specific purpose for up to six (6) months if a public hearing on the proposal is held within at least sixty (60) days of the moratorium's adoption; and

**WHEREAS**, moratoria enacted under RCW 35.63.200 and 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 developments; and

**WHEREAS**, the Eatonville Municipal Code does not currently have specific provisions addressing the production, processing, and retail sale of recreational marijuana; and

**WHEREAS**, on December 22, 2014, after holding a duly noticed public hearing, the Town Council adopted Ordinance No. 2014- 19 establishing a six (6) month moratorium on the acceptance of any development permit application, business license application, or application for the siting, location, or operation of any producer, processor, or retail seller of recreational marijuana; and

**WHEREAS**, the Town Council finds that extending the moratorium for an additional six (6) months concerning the acceptance of any development permit application, business license application, or application for the siting, location, or operation of any producer, processor, or retail seller of recreational marijuana will protect the health, safety, and welfare of the citizens of Eatonville; and

**WHEREAS**, the Town Council finds the Town requires additional time to conduct appropriate research to understand the extent and validity of the changes provided in I-502, to analyze the impact of the Superior Court decisions and any future appellate court decisions, and the potential liabilities under federal law; and

**WHEREAS**, in addition to the legal issues, the Town must study further, without limitation, the zoning and land use implications of locating uses and facilities for the

production, processing, and retail sale of recreational marijuana, and the associated impacts to the community; and

**WHEREAS**, based on the findings set forth above, the Town Council finds an extension of the moratorium is necessary to preserve the status quo; and

**WHEREAS**, the Town Council held a duly noticed public hearing at the regular Council meeting on June 8, 2015, to take public testimony regarding whether to extend the moratorium and to consider adopting further findings; now, therefore,

**BE IT ORDAINED BY THE COUNCIL OF THE TOWN OF EATONVILLE AS FOLLOWS:**

**Section 1. Findings.** The Town Council adopts all of the “Whereas” sections of this Ordinance as findings in support of this Ordinance. The Town Council, in its discretion, may adopt additional findings at the conclusion of the public hearing referenced above.

**Section 2. Moratorium Extended.** Pursuant to RCW 35.63.200 and RCW 36.70A.390, the previously adopted moratorium is hereby extended prohibiting within the Town of Eatonville the establishment, location, operation, licensing, or maintenance of facilities, businesses, or any other activities involving the production, processing, or retail sale of recreational marijuana or marijuana infused-products asserted to be authorized or actually authorized under Washington State Initiative 502.

**Section 3. Use Prohibited.** While this moratorium is in effect, the producing, processing, and retail sale of recreational marijuana or marijuana-infused products is hereby designated as prohibited in all zoning districts of the Town of Eatonville. No building permit, occupancy permit, or other development permit, and no business license application shall be accepted and no business license shall be issued for any of the purposes or activities listed herein.

**Section 4. Definitions.** As used in this Ordinance, all references to “marijuana,” “marijuana processing,” “marijuana producing,” “marijuana-infused products,” “marijuana retailing,” “retail outlet,” and “useable marijuana” shall have the meaning set forth in RCW 69.50.101, as now or hereafter amended.

**Section 5. Duration.** This moratorium shall remain in effect until December 22, 2015 unless extended as provided in RCW 35.63.200 or unless earlier terminated by the Town Council.

**Section 6.** Should any section, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this Ordinance be preempted by

state or federal law or regulation, such decision or preemption shall not affect the validity of the remaining portions of this Ordinance or its application to other persons or circumstances.

**Section 7.** This ordinance shall take effect after publication of a summary, consisting of the title, pursuant to RCW 35.27.300.

1ST READING: 06/08/2015

2ND READING:

PASSED by the Town Council of the Town of Eatonville and attested by the Clerk in authentication of such passage this 8<sup>th</sup> day of June 2015.

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Mike Schaub  
Mayor

ATTEST:

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Kathy Linnemeyer  
Town Clerk

APPROVED AS TO FORM:

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Gregory A. Jacoby  
Town Attorney