ORDINANCE NO. 2015-15

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 extending 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 November 23, 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 June 22, 2016 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: 11/23/2015
2ND READING: __/__/2015

PASSED by the Town Council of the Town of Eatonville and attested by the Clerk in authentication of such passage this ____ day of d 2015.

_____
Mike Schaub
Mayor

ATTEST:

_____
Kathy Linnemeyer
Town Clerk

APPROVED AS TO FORM:

_____
Gregory A. Jacoby
Town Attorney