RESOLUTION
BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF COUNTY PLANNING; ADOPTING AN IMMEDIATE EMERGENCY INTERIM ZONING AMENDMENT TO PROHIBIT THE PRODUCTION OF MARIJUANA IN THE RURAL LANDS FIVE DISTRICT.

WHEREAS, Benton County has the expressed statutory authority, pursuant to RCW 36.70.795 and 36.70A.390, to adopt moratoria, interim zoning ordinances, interim zoning maps, and/or interim official controls without holding a public hearing prior to adoption;

WHEREAS, moratoria, interim zoning ordinances, and interim official controls enacted under RCW 36.70.795 and RCW 36.70A.390 are methods by which local governments may preserve the status quo so that new regulations will not be rendered ineffective or moot by intervening development while permanent regulations are considered and adopted; and,

Whereas, the Board of County Commissioners is satisfied that it appears to be in the best interest of the public to adopt said ordinance and the respective amendment; NOW THEREFORE,

BE IT RESOLVED, that Ordinance No. 5601 an ordinance adopting an immediate emergency interim zoning amendment to prohibit the production of marijuana in the Rural Lands Five Acre District; setting a date for a public hearing; establishing a termination date for the interim zoning amendment; declaring an emergency necessitating immediate adoption of this ordinance; and temporarily amending Ordinance 488, Section 4 and BCC 11.16A.030 is hereby adopted and will take effect and be in full force upon its passage and adoption.

Dated this 12th day of May 2015.

[Signatures]
Chairman of the Board
Member
Member

Constituting the Board of County Commissioners of Benton County Washington.

Attest.................................
Clerk of the Board
AN ORDINANCE relating to zoning; adopting an immediate emergency interim zoning amendment to prohibit the production of marijuana in the Rural Lands Five Acre District; setting a date for a public hearing; establishing a termination date for the interim zoning amendment; declaring an emergency necessitating immediate adoption of this ordinance; and temporarily amending Ordinance 488, Section 4 and BCC 11.16A.030.

WHEREAS, Initiative Measure No. 502, approved in November of 2012, modified the State Controlled Substances Act to establish a system for lawful production, processing, and retail sales of recreational marijuana under state law; and,

WHEREAS, the Washington State Liquor Control Board adopted rules thereunder and established a licensing system for producers, processors, and retailers of recreational marijuana (collectively "marijuana businesses"); and,

WHEREAS, the County understands that marijuana production, i.e., growing, is allowed both indoors and outdoors by the State; and,

WHEREAS, the State Liquor Control Board does not consider local zoning regulations in deciding whether to issue licenses for marijuana businesses, but marijuana businesses are required to comply with local zoning requirements; and,

WHEREAS, on February 11, 2014, and prior to the State Liquor Control Board issuing any permits for marijuana businesses, the Benton County ("County") Board of Commissioners adopted Ordinance 534 to disallow Agricultural Related Industry uses, which includes marijuana processing and sales, as conditional uses in the Rural Lands Five Acre ("RL5") District; and,

WHEREAS, during that process the County was not informed of any concerns about negative effects of allowing marijuana production, i.e. growing, in the RL5 District; and,

WHEREAS, the County also adopted Resolution 2014-167, which summarized where marijuana production, processing and sales were allowed under the County’s then existing zoning districts; and,

WHEREAS, the County recently has received a great number of comments expressing concerns related to marijuana production in the proximity of the many residential areas within the RL5 District; and,
WHEREAS, in particular some of the concerns raised relate to the
pungent aroma of a marijuana crop, the nature and use of
pesticides in connection with growing marijuana, the possible
attraction of criminal activity to areas where marijuana is
grown, and aesthetic concerns regarding lighting and other
security measures either required by a State license or
electively installed by growers of marijuana; and

WHEREAS, based on the above it appears that marijuana production
may not be compatible with the allowed uses in the RL5 District
and may result in an increased risk to health and safety of
residents of those areas as well as increased code enforcement
and law enforcement activities; and,

WHEREAS, Article XI, Section 11 of the Washington Constitution
provides that any county may "make and enforce within its limits
all such local police, sanitary and other regulations as are not
in conflict with general laws"; and,

WHEREAS, Benton County has the expressed statutory authority,
pursuant to RCW 36.70.795 and 36.70A.390, to adopt moratoria,
interim zoning ordinances, interim zoning maps, and/or interim
official controls without holding a public hearing prior to
adoption; and,

WHEREAS, moratoria, interim zoning ordinances, and interim
official controls enacted under RCW 36.70.795 and RCW 36.70A.390
are methods by which local governments may preserve the status
quo so that new regulations will not be rendered ineffective or
useless by intervening development while permanent regulations are
considered and adopted; and,

WHEREAS, RCW 36.70.795 and RCW 36.70A.390 provide that a
moratorium, interim zoning ordinance and interim official
control may be effective for up to six months so long as a
public hearing on the moratorium or interim zoning ordinance is
held within sixty days after adoption; and,

WHEREAS, the County has decided that it is appropriate to
prevent additional marijuana growing operations in the RL5
District that allegedly are incompatible with surrounding uses
during the period of time necessary for the County to consider
permanent zoning amendments; and,

WHEREAS, to accomplish that objective and prevent new growing
operations from vesting or commencing in areas where they are
incompatible with surrounding uses while the County completes
its investigation, the County desires to adopt an immediate
interim zoning ordinance in the form of an amendment to BCC
11.16A.030 to disallow the growing of marijuana, i.e. marijuana
production, in the RL5 District; and,
WHEREAS, such interim regulation is consistent with the County’s Comprehensive Plan; and

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

SECTION 1. Findings. The Benton County Board of Commissioners makes the following findings and conclusions:

(a) The Board adopts and incorporates the foregoing recitals as findings as if fully set forth herein.

(b) A number of marijuana growing operations have been established since Initiative 502 was passed, and the increased level of such operations has generated significant citizen concerns about the impact that such operations can have in a residential neighborhood and on uses in general allowed in the RL5 District. Additional growing operations in residential neighborhoods in the RL5 District would exacerbate any valid concerns about the incompatibility of the use.

(c) This interim zoning ordinance to amend BCC 11.16A.030 will prohibit new marijuana production operations, i.e. growing operations, from commencing in the RL5 District while regulations to promote compatibility are considered.

(d) It is in the best interest of Benton County to prohibit new marijuana production operations in the RL5 zone at this time, pending further consideration and public engagement on potential long-term regulatory changes.

(e) The proposed interim official control will promote the public health, safety, morals and general welfare, and it is consistent with the goals and policies of the County’s Comprehensive Plan.

(f) This Ordinance satisfies the procedural and substantive requirements of and is consistent with the Growth Management Act.

(g) Pursuant to WAC 197-11-880 and BCC 6.35.050, the adoption of this Ordinance is exempt from the requirements for a threshold determination under the State Environmental Policy Act.

(h) The intent of this Ordinance is to temporarily prevent potential new marijuana production operations and has no effect on marijuana growing operations already located within the RL5 District at the time this Ordinance is adopted.
SECTION 2. Purpose. The purpose of this interim zoning ordinance is to allow the County to continue to analyze the issue of the compatibility of marijuana production with the prevalent uses within the RL5 District, including but not limited to residential uses, without the possibility that additional marijuana production operations will commence or that operators will flood the County with applications for permits for marijuana production buildings allowed under the County's existing zoning. The County will be examining whether marijuana production should be permitted outright, allowed as a conditional use or prohibited in the RL5 District, and additional time is needed to fully explore the issue.

SECTION 3. Interim Zoning. Ordinance 488, Section 4, and RCC 11.16A.030 are hereby amended to read as follows:

ALLOWABLE USES. Provided all applicable code provisions are satisfied, the following uses are allowed within the Rural Lands Five Acre District (RL-5) on a single parcel of record:

(a) Single Family Dwelling (SFD).

(b) Manufactured home if constructed after June 15, 1976.

(c) Manufactured home placed in a manufactured home/PAS park.

(d) Duplex.

(e) One or more accessory buildings and uses commonly appurtenant to a single family dwelling.

(f) Agricultural uses, except for commercial dairies, commercial hog ranches, commercial poultry/rabbit operations, (and) animal feedlots, and marijuana production (as each those terms is currently defined in RCW 69.50.101(t) and (gg), respectively), provided on any tract of land having an area of less than five (5) acres, agricultural uses may not include the keeping of more than one animal unit per equivalent per one-half acre of ground, exclusive of suckling animals.

(g) One or more agricultural buildings.

(h) Agricultural stand.

(i) Adult family home.

(j) Crisis residential center.

(k) Nursery/greenhouse.

(l) Utility substation facility.

(m) Yard sales occurring for no more than three (3) consecutive days on two (2) different occasions during a calendar year.

(n) Kennel, private.

(o) Fire department facility, law enforcement facility, and/or medical facility.
(p) Wineries/Breweries; provided structures used as part of the operation of the winery/brewery collectively do not exceed three thousand (3,000) square feet in size.

(q) Hiking and non-motorized biking trail.

(r) Equestrian trails.

(s) Church, provided structures used as part of the operation of the church collectively shall not exceed three thousand five hundred (3,500) square feet in size.

(t) No more than one (1) wind turbine and related support structures and other improvements per parcel for private use; provided:

(1) the wind turbine height must be less than sixty (60) feet;

(2) the wind turbine must be set back from all property lines a distance equal to one (1) foot for every foot in height of the wind turbine; and

(3) the wind turbine tower base shall be located at least forty (40) feet for every one (1) foot of tower height or one mile, whichever is greater, from the ends of and at least five thousand (5,000) feet from the sides of all aircraft runways which are identified on the most current edition of the Sectional Aeronautical Charts produced by the National Aeronautical Charting Office (NACO).

SECTION 4. Expiration of Interim Zoning. The interim zoning amendment set forth in Section 3 of this Ordinance shall commence upon adoption and automatically expire and be deemed to have been repealed six months from the date of adoption unless repealed, renewed or otherwise extended prior to such date in accordance with RCW 36.70A.390 and RCW 36.70.795.

SECTION 5. Public Hearing. Pursuant to RCW 36.70A.390 and RCW 36.70.795, the Board of County Commissioners will hold a public hearing on this Ordinance on June 2, 2014, at 9:00 a.m. at the Benton County Courthouse, Commissioner Hearing Room, Third Floor, 620 Market St., Prosser, Washington for the purpose of hearing public testimony regarding this Ordinance. Promptly following such hearing, the Board shall adopt additional findings of fact on this issue and either justify its continued imposition of the interim zoning amendment or repeal this Ordinance.

SECTION 6. Renewal. In accordance with RCW 36.70A.390 and RCW 36.70.795, this Ordinance may be renewed for one or more six month periods if a subsequent public hearing is held and findings of fact are made prior to each renewal.
SECTION 7. Declaration of Emergency. The Board of County Commissioners hereby finds, concludes and declares that an emergency exists necessitating that this Ordinance takes effect immediately upon passage by the Board of County Commissioners in order to preserve the public peace, health and safety. Non-emergent options would not be adequate to prevent new marijuana production operations from commencing in neighborhoods where they may be detrimental to the public peace, health and safety. Without this immediate interim zoning amendment to RCC 11.16A.030, marijuana production operations could commence and/or building applications for structures in which marijuana production would operate could vest, leading to development that could be incompatible with the code provisions eventually adopted by the County. Therefore, the interim zoning must be imposed as an emergency measure to protect the public health, safety and welfare, and to prevent the possibility that operators will commence production operations or flood the County with applications for permits for production buildings under the County’s existing zoning.

SECTION 8. Work Plan. During the effectiveness of this Ordinance, the County will collect information and receive testimony regarding the compatibility of marijuana production with other allowed uses within the RLS District.

SECTION 9. Severability. If any provision of this Ordinance is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, the constitutionality of the remainder of the Ordinance and the applicability thereof to other persons and circumstances shall not be affected thereby.

SECTION 10. Effective Date. This Ordinance shall take effect and be in full force upon its passage and adoption.

ADOPTED AND PASSED this 12 day of May, 2015.

[Signatures]
Chairman of the Board.

[Signatures]
Chairman Pro-Tem.

[Signatures]
Member.

[Signatures]
Constituting the Board of County Commissioners of Benton County, Washington

Attest: [Signature]
Clerk of the Board

Approved as to Form:

[Signature]
Deputy Prosecuting Attorney