



# City Council Agenda Bill

# 20087

Bill Number

**Subject:** Consideration of an emergency interim zoning ordinance to replace the recently adopted moratorium on the establishment of facilities producing, processing and retailing recreational marijuana.

**Summary Statement:** On July 1, 2013, the City Council adopted an emergency ordinance imposing a moratorium on the establishment of facilities producing, processing, and retailing recreational marijuana. The Liquor Control Board intends to begin accepting applications for licenses (30-day calendar day window) on or near September 16, 2013. In order to allow individuals or entities the ability to submit license applications during the window, staff has drafted two interim zoning ordinances for consideration. One allows the establishment of facilities producing, processing, and retailing recreational marijuana only in Industrial zones, while the other allows for retailing in both Industrial and Commercial zones.

**Previous Council Action:** 7/1/13 -Adoption of Ordinance No. 2013-07-047

**Fiscal Impact:** Existing staff resources will be used

**Funding Source:** General Fund

**Attachments:** Ordinance Establishing Interim Industrial Zoning for Recreational Marijuana  
Ordinance Establishing Interim Industrial and Commercial Zoning for Recreational Marijuana

Meeting Activity	Meeting Date	Staff Recommendation	Presented By	Time
Committee Briefing Council Vote Requested	12-Aug-2013	Pass Ordinance	Alan A. Marriner	10min.

**Council Committee:**

Committee of the Whole  
Seth Fleetwood, Chair

**Committee Actions:**

**Council Action:**

**Agenda Bill Contact:**

Kurt Nabbefeld, Senior Planner, 778-8351

**Reviewed By**  
Jeff Thomas, PCD Director

Initials	Date
<i>[Signature]</i>	8-7-2013

Legal  
Mayor

Initials	Date
AMM	8/7/13
KL/BL	8/7/13

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY OF BELLINGHAM, WASHINGTON, RELATING TO LAND USE AND ZONING; DECLARING AN EMERGENCY; ADOPTING INTERIM ZONING REGULATIONS FOR THE SITING, ESTABLISHMENT, AND OPERATION OF ANY STRUCTURES OR USES RELATING TO THE PRODUCTION, PROCESSING, OR RETAILING OF RECREATIONAL MARIJUANA (SPECIFICALLY EXCLUDING MEDICAL MARIJUANA OR MEDICAL CANNABIS); AND SETTING TWELVE MONTHS AS THE EFFECTIVE PERIOD OF THE INTERIM ZONING TO ALLOW CITIZENS TO APPLY FOR LICENSES FROM THE WASHINGTON STATE LIQUOR CONTROL BOARD TO PRODUCE, PROCESS, OR RETAIL RECREATIONAL MARIJUANA IN THE CITY WHILE THE CITY STUDIES THE LAND USE IMPACTS OF SUCH USES.**

**WHEREAS**, the Washington voters approved Initiative 502 (I-502) in 2012, which “authorizes the state liquor control board to regulate and tax marijuana for persons twenty-one years of age and older, and adds a new threshold for driving under the influence of marijuana”; and

**WHEREAS**, I-502 allows the Washington State Liquor Control Board to license marijuana producers “to produce marijuana for sale at wholesale to marijuana processors and other marijuana producers” (I-502, Sec. 4(1)); and

**WHEREAS**, I-502 allows the Washington State Liquor Control Board to license marijuana processors to “process, package and label usable marijuana and marijuana-infused products for sale at wholesale to marijuana retailers” (I-502, Sec. 4(2)); and

**WHEREAS**, I-502 allows the Washington State Liquor Control Board to license marijuana retailers to “sell usable marijuana and marijuana-infused products in retail outlets” (I-502, Sec. 4(3)); and

**WHEREAS**, under I-502, before the Washington State Liquor Control Board issues a new or renewed license to an applicant, it must give notice of the application to the chief executive officer of the incorporated city, and the city has the right to file its written objections to such license within 20 days after transmittal of the notice of application, but the Board makes the final decision whether to issue a license (I-502, Sec. 7(a) and (b)); and

**WHEREAS**, I-502 establishes certain siting limitations on the Washington State Liquor Control Board’s issuance of such licenses for any premises that are within 1,000 feet of the perimeter of the grounds of any elementary or secondary school, playground, recreation center or facility, child care center, public park, public transit center or library, or any game arcade, admission to which is not restricted to persons aged twenty-one years or older (I-502, Sec. 8); and

**WHEREAS**, I-502 contemplates that the Washington State Liquor Control Board will adopt rules to implement the provisions of I-502, which include the equipment and management of retail outlets and premises where marijuana is produced and processed, and the inspection of same; methods of producing, processing, and packaging the marijuana and marijuana products; security requirements at such establishments; retail outlet locations and hours of operation; labeling requirements and restrictions on advertising of such products; licensing and licensing renewal rules; and the manner and method to be used by licensees to transport and deliver marijuana and marijuana products (among other things), (I-502, Sec. 9); and

**WHEREAS**, on July 1, 2013 the Bellingham City Council Adopted Ordinance No. 2013-07-047, which established a temporary moratorium on development permits and business registrations for structures and operations involving the production, processing and retailing of recreational marijuana; and

**WHEREAS**, on July 3, 2013 the Washington State Liquor Control Board filed final proposed rules (Chapter 314-55 Washington Administrative Code) with the Code Reviser (CR 102) for applying for, obtaining, and maintaining licenses for the production, processing, and retailing of recreational marijuana; and

**WHEREAS**, the Washington State Liquor Control Board held hearings on these rules and intend for them to be adopted on August 14, 2013 and become effective on September 16, 2013; and

**WHEREAS**, on September 16, 2013, the Washington State Liquor Control Board intends to open a 30-day calendar window for accepting applications for licenses to produce, process and sell recreational marijuana; and

**WHEREAS**, I-502 limits the number of retail outlets to be licensed in each county, for the purpose of making useable marijuana and marijuana-infused products available for sale to adults 21 years of age or over (I-502, Sec. 13); and

**WHEREAS**, the City's July 1, 2013 adoption of a temporary moratorium on development permits and business registrations for structures and operations involving the production, processing and retailing of recreational marijuana may hinder or prevent persons from applying for a license from the Liquor Control Board to produce, process, or retail recreational marijuana in the City given that the 30-day calendar window for accepting applications begins September 16, 2013; and

**WHEREAS**, I-502 decriminalizes, for purposes of state law, the production, manufacture, processing, packaging, delivery, distribution, sale or possession of marijuana, as long as such activities are in compliance with I-502; and

**WHEREAS**, at this point in time, the City of Bellingham does not have any regulations addressing the facilities or uses identified in I-502, other than the requirement for a general business registration; and

**WHEREAS**, based on the licensing scheme in I-502, which prohibits anyone from engaging in the activities identified in I-502 without first obtaining a license from the Washington State Liquor Control Board, the City will not be issuing any business registration for the purposes described in I-502 unless the applicant demonstrates that he/she has first received the appropriate license from the State and complies with the requirements of this ordinance; and

**WHEREAS**, the uses described in I-502 have never been allowed in any state or city in the United States, and City needs time to study the land use impacts of these marijuana uses and the various development standards that should be considered to mitigate these impacts before adoption of any final regulatory ordinance; and

**WHEREAS**, the growing of marijuana, especially as the plants mature prior to harvest, may produce a distinctive and strong odor, which could be reduced by limiting growing and harvesting to specific geographic locations or zones within the City and within enclosed structures; and

**WHEREAS**, the City has received complaints of odor and location of marijuana operations within certain mixed-use zones in the City; and

**WHEREAS**, the City Council believes that while staff studies the land use and other impacts of producing, processing, and retailing recreational marijuana, the health, safety and welfare of the community may be best served by limiting such activities to certain zones in the City; and

**WHEREAS**, RCW 36.70A.390 and RCW 35.63.200 authorize the City Council to adopt an interim zoning ordinance for a period of up to twelve months without holding a public hearing on the proposal provided that a public hearing is held within at least sixty days of its adoption and a work plan is developed for related studies providing for the twelve-month period; and

**WHEREAS**, RCW 69.51A.140 authorizes cities to adopt and enforce zoning requirements, business licensing requirements, health and safety requirements, and business taxes pertaining to the production, processing, or dispensing of marijuana or marijuana products within their jurisdiction; and

**WHEREAS**, RCW 36.70A.390 provides that, "A county or city governing body that adopts a moratorium, interim zoning map, interim zoning ordinance, or interim official control without holding a public hearing on the proposed moratorium, interim zoning map, interim zoning ordinance, or interim official control, shall hold a public hearing on the adopted moratorium, interim zoning map, interim zoning ordinance, or interim official control within at least sixty days of its adoption, whether or not the governing body received a recommendation on the matter from the planning commission or department. If the governing body does not adopt findings of fact justifying its action before this hearing, then the governing body shall do so immediately after this public hearing. A moratorium, interim zoning map, interim zoning ordinance, or interim official control adopted under this section may be effective for not longer than six months, but may be effective for up to one year if a work plan is developed for related studies providing for such a longer period. A moratorium, interim zoning map, interim zoning ordinance, or interim official control 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"; and

**WHEREAS**, interim zoning controls enacted under RCW 36.70A.390 and RCW 35.63.200 are methods by which local governments may preserve the status quo so that new plans and regulations will not be rendered moot by intervening development; and

**WHEREAS**, pursuant to WAC 197-11-880, the adoption of this interim zoning ordinance is exempt from the requirements of a threshold determination under the State Environmental Policy Act (SEPA) and future permanent zoning regulations will be reviewed in accordance with SEPA Rules; and

**WHEREAS**, the Bellingham Municipal Code does not currently have specific provisions addressing the licensing, producing, processing or retailing of recreational marijuana; and

**WHEREAS**, in conformity with the responsibilities of the City of Bellingham to meet public health, safety and welfare requirements and provide zoning and land use regulations pursuant to state law, and the City's authority to regulate land use activity within its corporate limits, the City intends to develop appropriate public health, safety and welfare requirements and zoning and land use regulations for the establishment of facilities producing, processing and retailing of recreational marijuana; and

**WHEREAS**, the City Council has determined it needs additional time to conduct appropriate research to analyze the effects of the pending rules and regulations to be established by the Washington State Liquor Control Board pursuant to I-502; and

**WHEREAS**, interim zoning will provide the City with additional time to review and amend its public health, safety and welfare requirements and zoning and land use regulations related to the establishment of facilities producing, processing and retailing recreational marijuana and as authorized by I-502; and

**WHEREAS**, the City Council concludes that the City has the authority to establish an emergency interim zoning ordinance concerning the filing, acceptance, and processing of new applications or licensing for the establishment of, or operation of, any facility, building or

premises used for the production, processing or retailing of recreational marijuana, to protect the health, safety and welfare of the citizens of Bellingham; and

**WHEREAS**, the City Council adopts the foregoing as its findings of facts justifying the adoption of this ordinance; and

**NOW THEREFORE, THE CITY OF BELLINGHAM DOES ORDAIN:**

**Section 1. Findings of Fact.** The City Council adopts the above "WHEREAS" recitals as findings of fact in support of its action as required by RCW 36.70A.390 and RCW 35.63.200.

**Section 2. Marijuana Definitions.**

- A. "Cannabis or Marijuana" means all parts of the plant Cannabis, whether growing or not, with a THC concentration greater than 0.3 percent on a dry weight basis; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin. For the purposes of this Ordinance, "cannabis" or "marijuana" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, except the resin extracted therefrom, fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.
- B. "Marijuana processor" means a person licensed by the State Liquor Control Board to process marijuana into useable marijuana and marijuana-infused products, package and label usable marijuana and marijuana-infused products for sale in retail outlets, and sell usable marijuana and marijuana-infused products as wholesale to marijuana retailers.
- C. "Marijuana producer" means a person licensed by the State Liquor Control Board to produce and sell marijuana at wholesale to marijuana processors and other marijuana producers.
- D. "Marijuana-infused products" means products that contain marijuana or marijuana extracts and are intended for human use. The term "marijuana-infused products" does not include useable marijuana.
- E. "Marijuana retailer" means a person licensed by the State Liquor Control Board to sell usable marijuana and marijuana-infused products in a retail outlet.
- F. "Recreational marijuana" includes the growing, production, manufacture, processing, packaging, delivery, distribution, sale and possession of marijuana and marijuana-infused products in accordance with I-502 and WAC 314-55 and specifically excludes "medical cannabis" (marijuana) under RCW 69.51A.

- G. "Retail outlet" means a location licensed by the State Liquor Control Board for the retail sale of useable marijuana and marijuana-infused products.
- H. "Usable marijuana" means dried marijuana flowers. The term "usable marijuana" does not include marijuana-infused products.

**Section 3. Interim Zoning for the Siting, Establishment and Operation of Any Structures or Uses Relating to Recreational Marijuana Production, Processing, or Retailing.**

- A. No property, building or structure may be used for the production, processing or retailing of recreational marijuana unless compliant with I-502, WAC 314-55 and the interim zoning regulations contained herein. If the interim zoning regulations contained herein conflict with I-502 or WAC 314-55, the interim zoning regulations shall control.
- B. Location – Production, processing and retailing of recreational marijuana shall only be established in those Industrial zoned areas as shown on EXHIBIT A. No production, processing or retailing facility shall be established or conducted in a building that includes residential uses. In addition, no production, processing or retail facility may be established within one thousand feet (1000') of the perimeter of the grounds of the following entities:
  - 1. Elementary or secondary school;
  - 2. Playground;
  - 3. Recreation center;
  - 4. Child care center;
  - 5. Public park;
  - 6. Public transit center;
  - 7. Library; or
  - 8. Any game arcade (where admission is not restricted to persons age twenty-one or older).
- C. Indoor Operation – Recreational marijuana production, processing and retailing operations shall only be within a fully-enclosed and secure structure that complies with BMC Chapter 17.10, including but not limited to the International Building Code and the Washington Cities Electric Code, and BMC Chapter 17.20, the City's Fire Code.
- D. Establishment of production, processing and retailing recreational marijuana facilities shall comply with all applicable Industrial development standards in BMC Chapter 20, unless modified by this Ordinance, and review processes in BMC Chapter 21.

- E. Nuisance – Recreational marijuana production, processing and retailing facilities shall not adversely affect the health or safety of the community and shall be operated in a manner as to not create or be considered a nuisance. Nothing in this section shall be construed as a limitation on the City's authority to abate any nuisance under BMC Chapter 10.28 which may exist from the production, processing or retailing of recreational marijuana at any location, including from within a fully enclosed and secure building.
- F. Nonconforming Status - No use that constitutes or purports to be a production, processing or retailing facility for recreational marijuana, which was engaged in that activity prior to the adoption of this Ordinance, shall be deemed to have been a legally established use under the provisions of the Bellingham Municipal Code and that use shall not be entitled to claim legal nonconforming status.
- G. Enforcement and Violations - Violations of this Ordinance may be enforced as set forth in BMC Chapter 20.50, BMC Chapter 20.52, WAC 314-55, or as applicable, the Uniform Controlled Substances Act, chapter 69.50 RCW.

**Section 4. Purpose.** The purpose of this interim zoning ordinance is to allow the location and siting of structures and uses in which the production, processing, or retailing of recreational marijuana may take place in limited zones of the City so that persons may apply for licenses from the Washington State Liquor Control Board beginning on September 16, 2013 to produce, process and sell recreational marijuana in the City. While the interim zoning ordinance is in effect, the City will study the land use and other impacts associated with location and siting of structures and uses in which the production, processing, or retailing of recreational marijuana may take place, draft final zoning and business licensing regulations to address such structures and uses, hold public hearings on such draft regulations, and adopt such regulations.

**Section 5. Moratorium Repealed.** Ordinance No. 2013-07-047 adopted on July 1, 2013 and establishing a moratorium on the siting, establishment, and operation of any structures or uses relating to the production, processing or retailing of recreational marijuana is repealed.

**Section 6. Duration of Interim Zoning.** This interim zoning shall be in effect for twelve (12) months, beginning on August 12, 2013 and ending on August 12, 2014, unless an ordinance is adopted amending the Bellingham Municipal Code and rescinding the interim zoning before August 12, 2014.

**Section 7. Public Hearing Required.** As required by RCW 36.70A.390, within sixty (60) days of passage of this Ordinance the City Council will hold a public hearing on this interim zoning ordinance.

**Section 8. Work Plan.** During the interim zoning period, City staff will study the issues concerning the establishment and operation of producing, processing and retailing facilities allowed under I-502. Staff will prepare appropriate revisions to the City's codes and



regulations and conduct the public review process as required for amendments to the Bellingham Municipal Code.

**Section 9. Declaration of Emergency.** The City Council hereby declares that an emergency exists necessitating that this Ordinance take effect immediately upon passage by a majority vote plus one of the whole membership of the Council as required by RCW 35A.12.130. Without an immediate interim zoning ordinance repealing the existing moratorium and establishing standards for the location of facilities producing, processing and selling recreational marijuana, persons may be hindered or prevented from applying for a license from the Liquor Control Board to produce, process, or retail recreational marijuana in the City during the 30-day calendar window for accepting applications which begins September 16, 2013. This Ordinance does not affect any existing vested rights. Any use currently in operation as a producer, processor or retailer of recreational marijuana without a valid City business registration on the date of the passage of this Ordinance is not a legal non-conforming use.

**Section 10. Effective Date.** This Ordinance shall take effect and be in full force and effect immediately upon passage, as set forth herein, as long as it is approved by a majority plus one of the entire membership of the Council, as required by RCW 35A.12.130.

**Section 11. Conflict with other BMC Provisions.** If the provisions of this Ordinance are found to be inconsistent with other provisions of the Bellingham Municipal Code, this Ordinance shall control.

**Section 12. Severability.** If any section, sentence, clause or phrase of this Ordinance should be held to be unconstitutional or unlawful by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Ordinance.

**PASSED** by the Council this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
Council President

**APPROVED** by me this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
Mayor

**ATTEST:** \_\_\_\_\_  
Finance Director

**APPROVED AS TO FORM:**

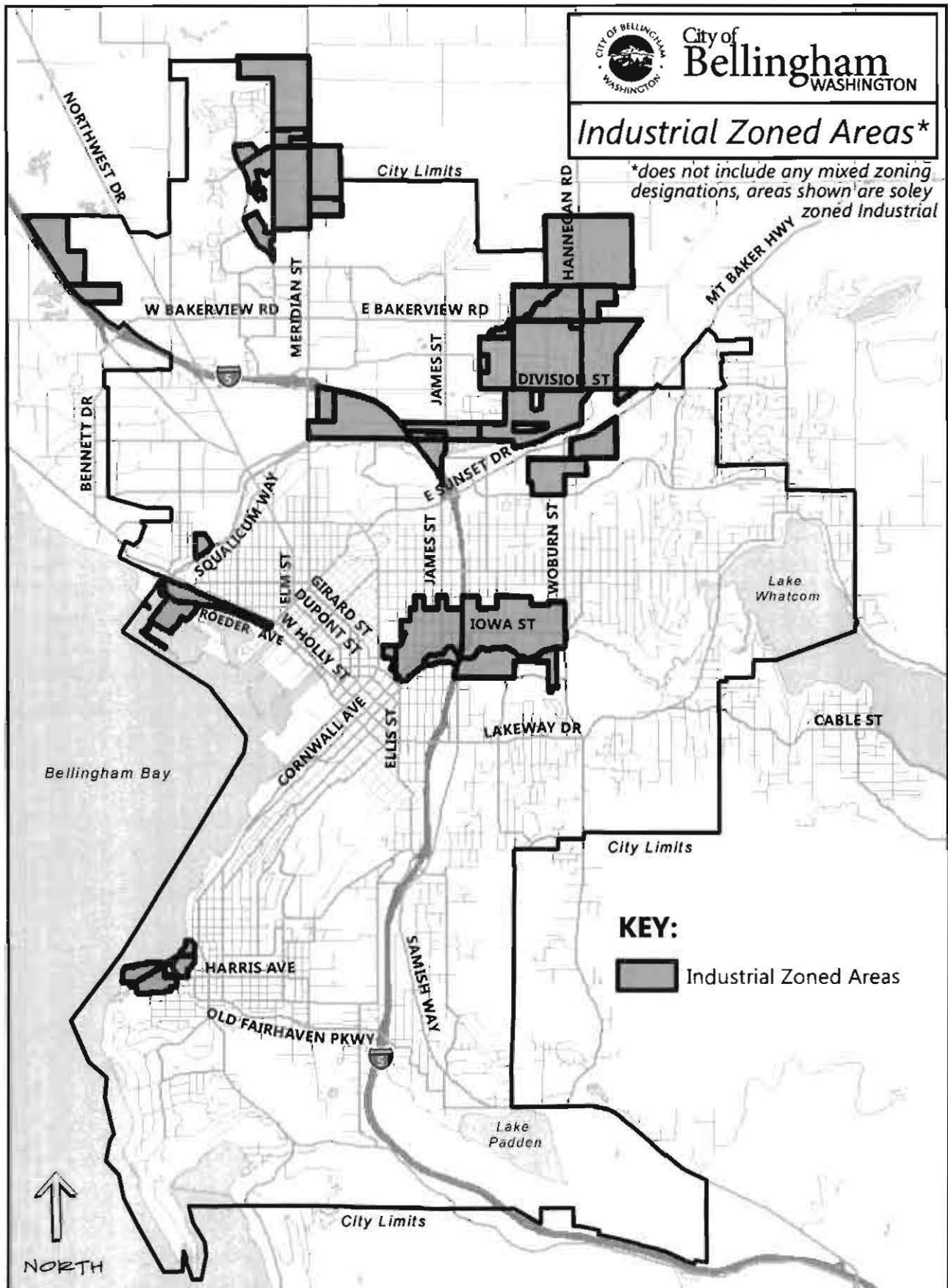
---

Office of the City Attorney

Published:

---

# EXHIBIT A



ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY OF BELLINGHAM, WASHINGTON, RELATING TO LAND USE AND ZONING; DECLARING AN EMERGENCY; ADOPTING INTERIM ZONING REGULATIONS FOR THE SITING, ESTABLISHMENT, AND OPERATION OF ANY STRUCTURES OR USES RELATING TO THE PRODUCTION, PROCESSING, OR RETAILING OF RECREATIONAL MARIJUANA (SPECIFICALLY EXCLUDING MEDICAL MARIJUANA OR MEDICAL CANNABIS); AND SETTING TWELVE MONTHS AS THE EFFECTIVE PERIOD OF THE INTERIM ZONING TO ALLOW CITIZENS TO APPLY FOR LICENSES FROM THE WASHINGTON STATE LIQUOR CONTROL BOARD TO PRODUCE, PROCESS, OR RETAIL RECREATIONAL MARIJUANA IN THE CITY WHILE THE CITY STUDIES THE LAND USE IMPACTS OF SUCH USES.**

**WHEREAS**, the Washington voters approved Initiative 502 (I-502) in 2012, which “authorizes the state liquor control board to regulate and tax marijuana for persons twenty-one years of age and older, and adds a new threshold for driving under the influence of marijuana”; and

**WHEREAS**, I-502 allows the Washington State Liquor Control Board to license marijuana producers “to produce marijuana for sale at wholesale to marijuana processors and other marijuana producers” (I-502, Sec. 4(1)); and

**WHEREAS**, I-502 allows the Washington State Liquor Control Board to license marijuana processors to “process, package and label usable marijuana and marijuana-infused products for sale at wholesale to marijuana retailers” (I-502, Sec. 4(2)); and

**WHEREAS**, I-502 allows the Washington State Liquor Control Board to license marijuana retailers to “sell usable marijuana and marijuana-infused products in retail outlets” (I-502, Sec. 4(3)); and

**WHEREAS**, under I-502, before the Washington State Liquor Control Board issues a new or renewed license to an applicant, it must give notice of the application to the chief executive officer of the incorporated city, and the city has the right to file its written objections to such license within 20 days after transmittal of the notice of application, but the Board makes the final decision whether to issue a license (I-502, Sec. 7(a) and (b)); and

**WHEREAS**, I-502 establishes certain siting limitations on the Washington State Liquor Control Board’s issuance of such licenses for any premises that are within 1,000 feet of the perimeter of the grounds of any elementary or secondary school, playground, recreation center or facility, child care center, public park, public transit center or library, or any game arcade, admission to which is not restricted to persons aged twenty-one years or older (I-502, Sec. 8); and

**WHEREAS**, I-502 contemplates that the Washington State Liquor Control Board will adopt rules to implement the provisions of I-502, which include the equipment and management of retail outlets and premises where marijuana is produced and processed, and the inspection of same; methods of producing, processing, and packaging the marijuana and marijuana products; security requirements at such establishments; retail outlet locations and hours of operation; labeling requirements and restrictions on advertising of such products; licensing and licensing renewal rules; and the manner and method to be used by licensees to transport and deliver marijuana and marijuana products (among other things), (I-502, Sec. 9); and

**WHEREAS**, on July 1, 2013 the Bellingham City Council Adopted Ordinance No. 2013-07-047, which established a temporary moratorium on development permits and business registrations for structures and operations involving the production, processing and retailing of recreational marijuana; and

**WHEREAS**, on July 3, 2013 the Washington State Liquor Control Board filed final proposed rules (Chapter 314-55 Washington Administrative Code) with the Code Reviser (CR 102) for applying for, obtaining, and maintaining licenses for the production, processing, and retailing of recreational marijuana; and

**WHEREAS**, the Washington State Liquor Control Board held hearings on these rules and intend for them to be adopted on August 14, 2013 and become effective on September 16, 2013; and

**WHEREAS**, on September 16, 2013, the Washington State Liquor Control Board intends to open a 30-day calendar window for accepting applications for licenses to produce, process and sell recreational marijuana; and

**WHEREAS**, I-502 limits the number of retail outlets to be licensed in each county, for the purpose of making useable marijuana and marijuana-infused products available for sale to adults 21 years of age or over (I-502, Sec. 13); and

**WHEREAS**, the City's July 1, 2013 adoption of a temporary moratorium on development permits and business registrations for structures and operations involving the production, processing and retailing of recreational marijuana may hinder or prevent persons from applying for a license from the Liquor Control Board to produce, process, or retail recreational marijuana in the City given that the 30-day calendar window for accepting applications begins September 16, 2013; and

**WHEREAS**, I-502 decriminalizes, for purposes of state law, the production, manufacture, processing, packaging, delivery, distribution, sale or possession of marijuana, as long as such activities are in compliance with I-502; and

**WHEREAS**, at this point in time, the City of Bellingham does not have any regulations addressing the facilities or uses identified in I-502, other than the requirement for a general business registration; and

**WHEREAS**, based on the licensing scheme in I-502, which prohibits anyone from engaging in the activities identified in I-502 without first obtaining a license from the Washington State Liquor Control Board, the City will not be issuing any business registration for the purposes described in I-502 unless the applicant demonstrates that he/she has first received the appropriate license from the State and complies with the requirements of this ordinance; and

**WHEREAS**, the uses described in I-502 have never been allowed in any state or city in the United States, and City needs time to study the land use impacts of these marijuana uses and the various development standards that should be considered to mitigate these impacts before adoption of any final regulatory ordinance; and

**WHEREAS**, the growing of marijuana, especially as the plants mature prior to harvest, may produce a distinctive and strong odor, which could be reduced by limiting growing and harvesting to specific geographic locations or zones within the City and within enclosed structures; and

**WHEREAS**, the City has received complaints of odor and location of marijuana operations within certain mixed-use zones in the City; and

**WHEREAS**, the City Council believes that while staff studies the land use and other impacts of producing, processing, and retailing recreational marijuana, the health, safety and welfare of the community may be best served by limiting such activities to certain zones in the City; and

**WHEREAS**, RCW 36.70A.390 and RCW 35.63.200 authorize the City Council to adopt an interim zoning ordinance for a period of up to twelve months without holding a public hearing on the proposal provided that a public hearing is held within at least sixty days of its adoption and a work plan is developed for related studies providing for the twelve-month period; and

**WHEREAS**, RCW 69.51A.140 authorizes cities to adopt and enforce zoning requirements, business licensing requirements, health and safety requirements, and business taxes pertaining to the production, processing, or dispensing of marijuana or marijuana products within their jurisdiction; and

**WHEREAS**, RCW 36.70A.390 provides that, "A county or city governing body that adopts a moratorium, interim zoning map, interim zoning ordinance, or interim official control without holding a public hearing on the proposed moratorium, interim zoning map, interim zoning ordinance, or interim official control, shall hold a public hearing on the adopted moratorium, interim zoning map, interim zoning ordinance, or interim official control within at least sixty days of its adoption, whether or not the governing body received a recommendation on the matter from the planning commission or department. If the governing body does not adopt findings of fact justifying its action before this hearing, then the governing body shall do so immediately after this public hearing. A moratorium, interim zoning map, interim zoning ordinance, or interim official control adopted under this section may be effective for not longer than six months, but may be effective for up to one year if a work plan is developed for related studies providing for such a longer period. A moratorium, interim zoning map, interim zoning ordinance, or interim official control 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"; and

**WHEREAS**, interim zoning controls enacted under RCW 36.70A.390 and RCW 35.63.200 are methods by which local governments may preserve the status quo so that new plans and regulations will not be rendered moot by intervening development; and

**WHEREAS**, pursuant to WAC 197-11-880, the adoption of this interim zoning ordinance is exempt from the requirements of a threshold determination under the State Environmental Policy Act (SEPA) and future permanent zoning regulations will be reviewed in accordance with SEPA Rules; and

**WHEREAS**, the Bellingham Municipal Code does not currently have specific provisions addressing the licensing, producing, processing or retailing of recreational marijuana; and

**WHEREAS**, in conformity with the responsibilities of the City of Bellingham to meet public health, safety and welfare requirements and provide zoning and land use regulations pursuant to state law, and the City's authority to regulate land use activity within its corporate limits, the City intends to develop appropriate public health, safety and welfare requirements and zoning and land use regulations for the establishment of facilities producing, processing and retailing of recreational marijuana; and

**WHEREAS**, the City Council has determined it needs additional time to conduct appropriate research to analyze the effects of the pending rules and regulations to be established by the Washington State Liquor Control Board pursuant to I-502; and

**WHEREAS**, interim zoning will provide the City with additional time to review and amend its public health, safety and welfare requirements and zoning and land use regulations related to the establishment of facilities producing, processing and retailing recreational marijuana and as authorized by I-502; and

**WHEREAS**, the City Council concludes that the City has the authority to establish an emergency interim zoning ordinance concerning the filing, acceptance, and processing of new applications or licensing for the establishment of, or operation of, any facility, building or

premises used for the production, processing or retailing of recreational marijuana, to protect the health, safety and welfare of the citizens of Bellingham; and

**WHEREAS**, the City Council adopts the foregoing as its findings of facts justifying the adoption of this ordinance; and

**NOW THEREFORE, THE CITY OF BELLINGHAM DOES ORDAIN:**

**Section 1. Findings of Fact.** The City Council adopts the above "WHEREAS" recitals as findings of fact in support of its action as required by RCW 36.70A.390 and RCW 35.63.200.

**Section 2. Marijuana Definitions.**

- A. "Cannabis or Marijuana" means all parts of the plant Cannabis, whether growing or not, with a THC concentration greater than 0.3 percent on a dry weight basis; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin. For the purposes of this Ordinance, "cannabis" or "marijuana" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, except the resin extracted therefrom, fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.
- B. "Marijuana processor" means a person licensed by the State Liquor Control Board to process marijuana into useable marijuana and marijuana-infused products, package and label usable marijuana and marijuana-infused products for sale in retail outlets, and sell usable marijuana and marijuana-infused products as wholesale to marijuana retailers.
- C. "Marijuana producer" means a person licensed by the State Liquor Control Board to produce and sell marijuana at wholesale to marijuana processors and other marijuana producers.
- D. "Marijuana-infused products" means products that contain marijuana or marijuana extracts and are intended for human use. The term "marijuana-infused products" does not include useable marijuana.
- E. "Marijuana retailer" means a person licensed by the State Liquor Control Board to sell usable marijuana and marijuana-infused products in a retail outlet.
- F. "Recreational marijuana" includes the growing, production, manufacture, processing, packaging, delivery, distribution, sale and possession of marijuana and marijuana-infused products in accordance with I-502 and WAC 314-55 and specifically excludes "medical cannabis" (marijuana) under RCW 69.51A.



- G. "Retail outlet" means a location licensed by the State Liquor Control Board for the retail sale of useable marijuana and marijuana-infused products.
- H. "Usable marijuana" means dried marijuana flowers. The term "usable marijuana" does not include marijuana-infused products.

**Section 3. Interim Zoning for the Siting, Establishment and Operation of Any Structures or Uses Relating to Recreational Marijuana Production, Processing, or Retailing.**

- A. No property, building or structure may be used for the production, processing or retailing of recreational marijuana unless compliant with I-502, WAC 314-55 and the interim zoning regulations contained herein. If the interim zoning regulations contained herein conflict with I-502 or WAC 314-55, the interim zoning regulations shall control.
- B. **Location – Production and processing of recreational marijuana shall only be established in those Industrial zoned areas as shown on EXHIBIT A. Retailing of recreational marijuana shall only be established in those Industrial and Commercial zoned areas as shown on Exhibit B.** No production, processing or retailing facility shall be established or conducted in a building that includes residential uses. In addition, no production, processing or retail facility may be established within one thousand feet (1000') of the perimeter of the grounds of the following entities:
  - 1. Elementary or secondary school;
  - 2. Playground;
  - 3. Recreation center;
  - 4. Child care center;
  - 5. Public park;
  - 6. Public transit center;
  - 7. Library; or
  - 8. Any game arcade (where admission is not restricted to persons age twenty-one or older).
- C. Indoor Operation – Recreational marijuana production, processing and retailing operations shall only be within a fully-enclosed and secure structure that complies with BMC Chapter 17.10, including but not limited to the International Building Code and the Washington Cities Electric Code, and BMC Chapter 17.20, the City's Fire Code.
- D. Establishment of production, processing and retailing recreational marijuana facilities shall comply with all applicable Industrial development standards in BMC Chapter 20, unless modified by this Ordinance, and review processes in BMC Chapter 21.

- E. Nuisance – Recreational marijuana production, processing and retailing facilities shall not adversely affect the health or safety of the community and shall be operated in a manner as to not create or be considered a nuisance. Nothing in this section shall be construed as a limitation on the City's authority to abate any nuisance under BMC Chapter 10.28 which may exist from the production, processing or retailing of recreational marijuana at any location, including from within a fully enclosed and secure building.
- F. Nonconforming Status - No use that constitutes or purports to be a production, processing or retailing facility for recreational marijuana, which was engaged in that activity prior to the adoption of this Ordinance, shall be deemed to have been a legally established use under the provisions of the Bellingham Municipal Code and that use shall not be entitled to claim legal nonconforming status.
- G. Enforcement and Violations - Violations of this Ordinance may be enforced as set forth in BMC Chapter 20.50, BMC Chapter 20.52, WAC 314-55, or as applicable, the Uniform Controlled Substances Act, chapter 69.50 RCW.

**Section 4. Purpose.** The purpose of this interim zoning ordinance is to allow the location and siting of structures and uses in which the production, processing, or retailing of recreational marijuana may take place in limited zones of the City so that persons may apply for licenses from the Washington State Liquor Control Board beginning on September 16, 2013 to produce, process and sell recreational marijuana in the City. While the interim zoning ordinance is in effect, the City will study the land use and other impacts associated with location and siting of structures and uses in which the production, processing, or retailing of recreational marijuana may take place, draft final zoning and business licensing regulations to address such structures and uses, hold public hearings on such draft regulations, and adopt such regulations.

**Section 5. Moratorium Repealed.** Ordinance No. 2013-07-047 adopted on July 1, 2013 and establishing a moratorium on the siting, establishment, and operation of any structures or uses relating to the production, processing or retailing of recreational marijuana is repealed.

**Section 6. Duration of Interim Zoning.** This interim zoning shall be in effect for twelve (12) months, beginning on August 12, 2013 and ending on August 12, 2014, unless an ordinance is adopted amending the Bellingham Municipal Code and rescinding the interim zoning before August 12, 2014.

**Section 7. Public Hearing Required.** As required by RCW 36.70A.390, within sixty (60) days of passage of this Ordinance the City Council will hold a public hearing on this interim zoning ordinance.

**Section 8. Work Plan.** During the interim zoning period, City staff will study the issues concerning the establishment and operation of producing, processing and retailing facilities allowed under I-502. Staff will prepare appropriate revisions to the City's codes and regulations and conduct the public review process as required for amendments to the Bellingham Municipal Code.

**Section 9. Declaration of Emergency.** The City Council hereby declares that an emergency exists necessitating that this Ordinance take effect immediately upon passage by a majority vote plus one of the whole membership of the Council as required by RCW 35A.12.130. Without an immediate interim zoning ordinance repealing the existing moratorium and establishing standards for the location of facilities producing, processing and selling recreational marijuana, persons may be hindered or prevented from applying for a license from the Liquor Control Board to produce, process, or retail recreational marijuana in the City during the 30-day calendar window for accepting applications which begins September 16, 2013. This Ordinance does not affect any existing vested rights. Any use currently in operation as a producer, processor or retailer of recreational marijuana without a valid City business registration on the date of the passage of this Ordinance is not a legal non-conforming use.

**Section 10. Effective Date.** This Ordinance shall take effect and be in full force and effect immediately upon passage, as set forth herein, as long as it is approved by a majority plus one of the entire membership of the Council, as required by RCW 35A.12.130.

**Section 11. Conflict with other BMC Provisions.** If the provisions of this Ordinance are found to be inconsistent with other provisions of the Bellingham Municipal Code, this Ordinance shall control.

**Section 12. Severability.** If any section, sentence, clause or phrase of this Ordinance should be held to be unconstitutional or unlawful by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Ordinance.

**PASSED** by the Council this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
Council President

**APPROVED** by me this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
Mayor

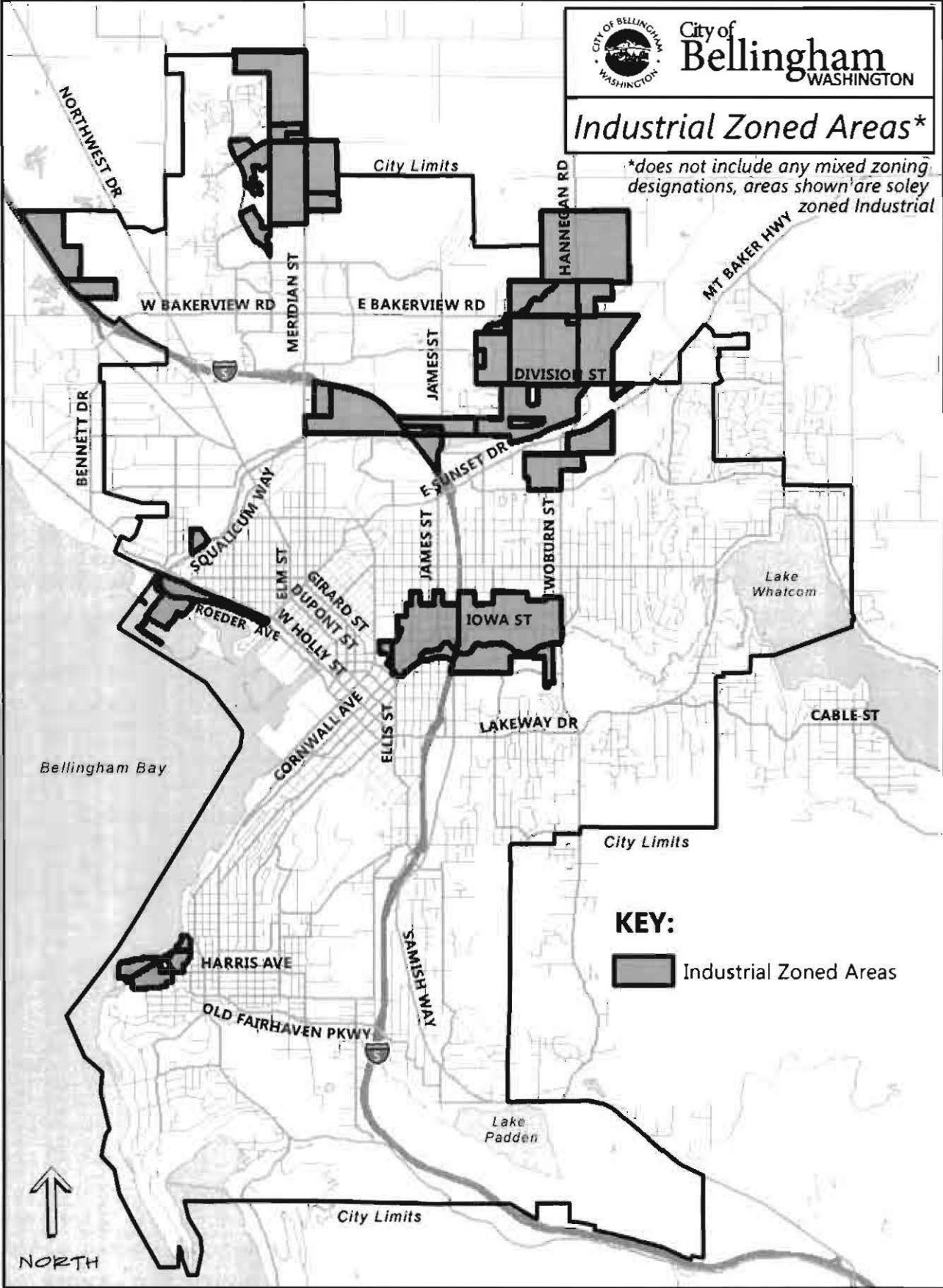
**ATTEST:** \_\_\_\_\_  
Finance Director

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Office of the City Attorney

Published:  
\_\_\_\_\_

# EXHIBIT A



# EXHIBIT B

