

EMERGENCY ORDINANCE NO. 2016-08-025

AN ORDINANCE OF THE CITY OF BELLINGHAM, WASHINGTON, RELATING TO LAND USE AND ZONING; DECLARING AN EMERGENCY; ADOPTING AND RENEWING INTERIM ZONING REGULATIONS FOR THE SITING, ESTABLISHMENT, AND OPERATION OF ANY STRUCTURES OR USES RELATING TO THE PRODUCTION, PROCESSING, OR RETAILING OF RECREATIONAL AND MEDICAL MARIJUANA AND THE ESTABLISHMENT AND OPERATION OF MEDICAL CANNABIS COOPERATIVES; AND SETTING SIX MONTHS AS THE EFFECTIVE PERIOD OF THE INTERIM ZONING TO ALLOW CITIZENS TO APPLY FOR LICENSES FROM THE WASHINGTON STATE LIQUOR AND CANNABIS BOARD TO PRODUCE, PROCESS, OR RETAIL RECREATIONAL AND MEDICAL MARIJUANA AND FORM AND OPERATE MEDICAL CANNABIS COOPERATIVES 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 and Cannabis 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 and Cannabis 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 and Cannabis 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 and Cannabis 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 and Cannabis 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, Part III Section 301 8. (b) of Second Engrossed Second Substitute House Bill 2136 allows a city, county, or town the authority to reduce the one thousand foot (1000') perimeter except for elementary schools, secondary schools, and playgrounds; and

WHEREAS, the City Council finds that submittal of a complete City land use or building permit application should provide a vested status, as allowed by the Bellingham Municipal Code, to recreational and medical marijuana producers, processors or retailers; and

WHEREAS, a reduction, at this time, in the one thousand foot perimeter for vested recreational and medical marijuana producers, processors, or retailers will not negatively impact the City's civil regulatory enforcement, criminal law enforcement interests, public safety, or public health; and

WHEREAS, I-502 contemplates that the Washington State Liquor and Cannabis 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 August 12, 2013 the Bellingham City Council adopted an emergency ordinance (Ordinance No. 2013-08-061), which established interim zoning regulations for the siting, establishment, and operation of any structures or uses relating to the production, processing and retailing of recreational marijuana; and

WHEREAS, on August 11, 2014 the Bellingham City Council renewed and extended the interim zoning regulations by adopting Ordinance No. 2014-08-039; and

WHEREAS, on February 9, 2015 the Bellingham City Council renewed and extended the interim zoning regulations by adopting Ordinance No.2015-02-003; and

WHEREAS, on August 10, 2015 the Bellingham City Council renewed and extended the interim zoning regulations by adopting Ordinance No.2015-08-034; and

WHEREAS, on September 28, 2015 the Bellingham City Council held a public hearing and revised Ordinance No. 2015-08-034 and renewed and extended the interim zoning regulations by adopting Ordinance No. 2015-09-040; and

WHEREAS, on February 8, 2016 the Bellingham City Council renewed and extended the interim zoning regulations by adopting Ordinance No. 2016-02-004; and

WHEREAS, this emergency ordinance expires on August 8, 2016; and

WHEREAS, a similar emergency ordinance adopted by the Bellingham City Council establishing interim zoning regulations for medical marijuana expired on June 15, 2016; and

WHEREAS, on October 16, 2013 the Washington State Liquor and Cannabis Board adopted rules (Chapter 314-55 Washington Administrative Code) for applying for, obtaining, and maintaining licenses for the production, processing, and retailing of recreational marijuana; and

WHEREAS, the Washington State Legislature passed the Cannabis Patient Protection Act (2SSB 5052) in 2015, which significantly revamps the entire medical marijuana structure in Washington; and

WHEREAS, this legislation creates a comprehensive act that uses the regulations in place for the recreational marijuana market to provide regulation for the medical use of marijuana, while ensuring patients retain their ability to grow their own marijuana for their own medical use. Under this new legislation the entire medical marijuana system will now be under the jurisdiction of the Washington State Liquor and Cannabis Board (LCB), and state licenses will be required for anyone making retail sales of medical marijuana or growing or processing medical marijuana for retail sale; and

WHEREAS, 2SSB 5052 also repealed all statutory provisions for collective gardens effective July 1, 2016. The legislation replaces collective gardens with LCB-certified cooperatives formed by up to four medical marijuana qualifying patients or designated providers; and

WHEREAS, RCW 69.51A - Medical Cannabis - was created as there is medical evidence that some patients with terminal or debilitating medical conditions may, under their health care professional's care, benefit from the medical use of marijuana; and

WHEREAS, RCW 69.51A.250 allows qualifying patients or designated providers to form a cooperative as of July 1, 2016; and

WHEREAS, the renewal of City of Bellingham interim zoning and land use regulations will allow staff the time to incorporate the recent State Legislature's actions on marijuana into draft final rules and conduct a Type VI legislative review; 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, 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, 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 and Cannabis 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 and medical 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 and renew an interim zoning ordinance without holding a public hearing on the proposal provided that a public hearing is held within at least sixty days of its adoption; 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 and medical 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 recreational and medical marijuana; and

WHEREAS, the City Council has determined it needs additional time to conduct appropriate research to analyze the effects of the rules and regulations established by the Washington State Liquor and Cannabis Board pursuant to I-502 and 2SSB 5052; 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 and medical marijuana and as authorized by I-502 and 2SSB 5052; 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 and medical 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 and Cannabis 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 and Cannabis 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 and Cannabis Board to sell usable marijuana and marijuana-infused products in a retail outlet.
- F. "Retail outlet" means a location licensed by the State Liquor and Cannabis Board for the retail sale of useable marijuana and marijuana-infused products.
- G. "Usable marijuana" means dried marijuana flowers. The term "usable marijuana" does not include marijuana-infused products.

- H. "Qualifying patients" and "Designated provider" shall be as defined in RCW 69.51A.250.

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

- A. No property, building or structure may be used for the production, processing or retailing of recreational or medical 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 and medical marijuana shall only be established in those Industrial zoned areas as shown on EXHIBIT A. Retailing of recreational and medical 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).

Exception - All marijuana producers, processors, and retailers must meet the one thousand foot (1000') perimeter requirement on the date of filing of a complete City land use or building permit application to establish their use at a specific site. However, for recreation centers, child care centers, public transit centers, or any game arcade (where admission is not restricted to persons age twenty-one or older) that locate within the one thousand foot perimeter of the site after the marijuana producer, processor, or retailer has filed a complete City land use or building permit application to establish its use but before the State Liquor and Cannabis Board has issued a license for the marijuana use, the one thousand foot perimeter shall be reduced to one hundred feet (100').

- C. Indoor Operation – Recreational and medical 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 and medical 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 and medical 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 or medical 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 or medical 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. Interim Zoning for Medical Cannabis Cooperatives

- A. Collective gardens are prohibited within any parcel, lot, zoning district within the official boundary of the City of Bellingham.
- B. Qualifying patients or designated providers may form and operate a cooperative as allowed under RCW 69.51A.250 and subject to the following:
 - 1. No cooperative shall be located within one mile of a marijuana retailer;
 - 2. No cooperative shall be located within one thousand (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, library, or any game arcade that admission to which is not restricted to persons aged twenty-one (21) years or older
 - 3. The cooperative shall be within the residence of one of the cooperative participants and be contained within a main building 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.

4. The residence shall maintain a kitchen, bathroom(s) and primary bedroom(s) for their intended use and shall not be used primarily for medical cannabis cultivation.
 5. Medical cannabis cultivation lighting shall not exceed 1200 watts.
 6. The medical cannabis cultivation area shall be in compliance with the City's Building Code provisions regarding natural ventilation or mechanical ventilation (or its equivalents).
 7. The medical cannabis cultivation area shall not adversely affect the health or safety of the nearby residents by creating dust, glare, light, heat, noise, noxious gasses, odor, smoke, traffic, vibration, or other impacts, or be hazardous due to use or storage of materials, processes, products or wastes.
- C. Nuisance - Cultivation of medical cannabis within a cooperative as allowed under RCW 69.51A.250 and this section shall not adversely affect the health or safety of the community and shall be done 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 cultivation of cannabis plants from any location, including from within a fully enclosed and secure building.

Section 5. 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 and medical marijuana may take place in limited zones of the City so that persons may apply for licenses from the Washington State Liquor and Cannabis Board to produce, process and sell recreational and medical 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 and medical 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 6. Duration of Interim Zoning. This interim zoning shall be in effect for six (6) months, beginning on August 8, 2016 and ending on February 8, 2017, unless an ordinance is adopted amending the Bellingham Municipal Code and rescinding the interim zoning before February 8, 2017.

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 and medical cannabis cooperatives. 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.

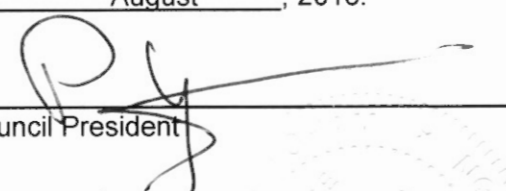
Section 9. Declaration of Emergency. The City Council hereby declares that an emergency exists necessitating that this Ordinance take effect immediately upon passage by a majority vote plus one of the whole membership of the Council as required by RCW 35A.12.130. Without an immediate interim zoning ordinance establishing standards for the location of facilities producing, processing and selling recreational and medical marijuana, applications for such facilities could be submitted and become vested, leading to the development or use of property that is incompatible with the laws adopted by the City of Bellingham. Therefore, this interim zoning ordinance must be imposed and renewed as an emergency measure to protect the public health, safety and welfare, and to prevent the submission of applications to the City in an attempt to vest rights for an indefinite period of time. This Ordinance does not affect any existing vested rights. Any use currently in operation as a producer, processor or retailer of recreational and medical 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 8th day of August, 2016.



Council President

APPROVED by me this 16th day of August, 2016.

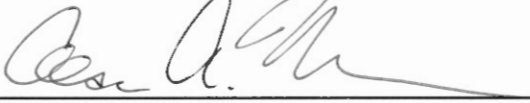


Mayor

ATTEST: 

Finance Director

APPROVED AS TO FORM:



Office of the City Attorney

Published: August 12, 2016

EXHIBIT A

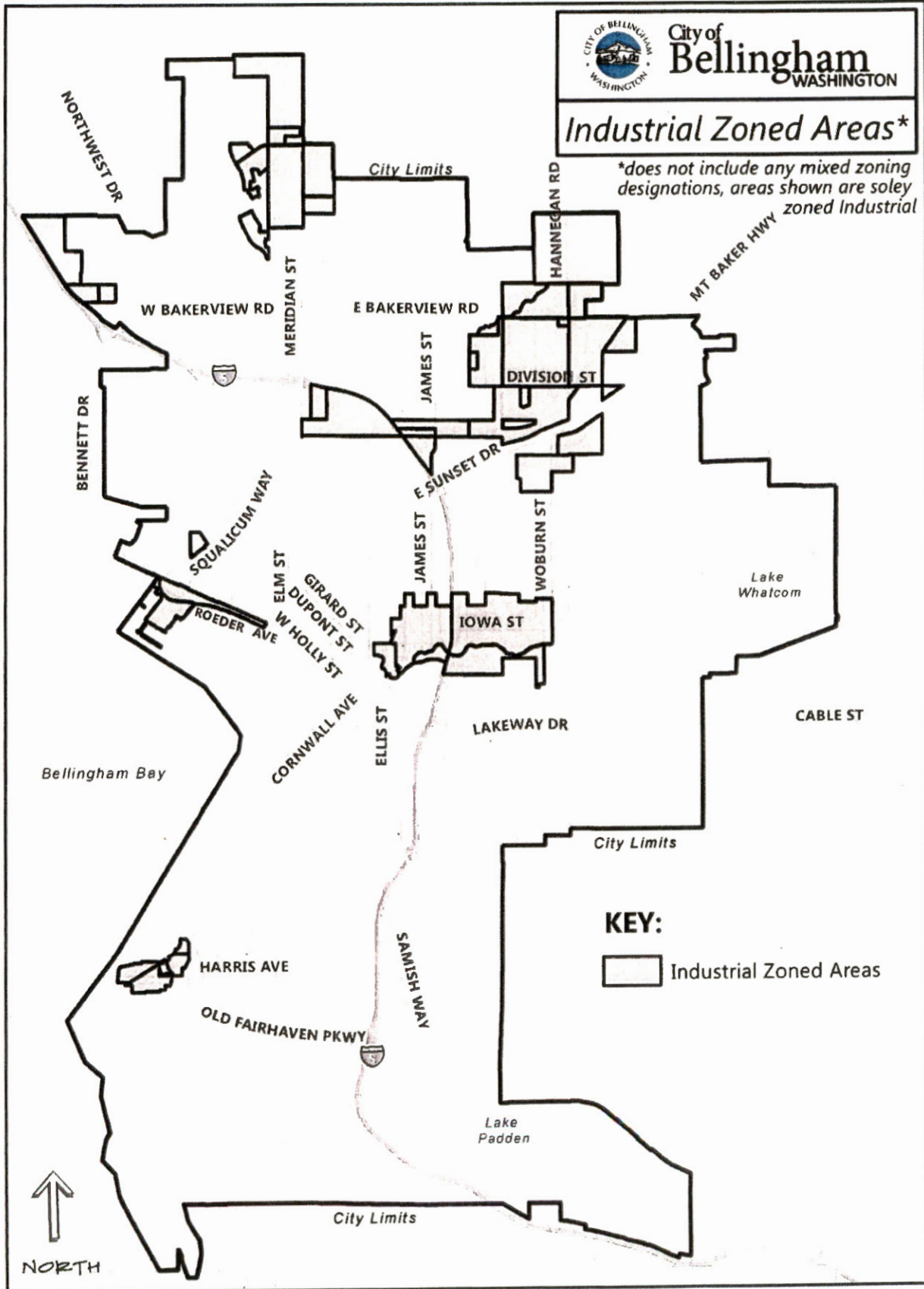


EXHIBIT B

