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TOWN OF FAIRFIELD
SPOKANE COUNTY, WASHINGTON
ORDINANCE NO. 374

AN ORDINANCE OF THE TOWN OF FAIRFIELD, SPOKANE COUNTY, WASHINGTON, ADOPTING A MORATORIUM ON THE SITING, ESTABLISHMENT, LOCATION, PERMITTING, LICENSING, OPERATION OR MAINTENANCE OF ANY STRUCTURES OR USES RELATING TO THE CULTIVATION OF MARIJUANA, PRODUCTION OF MARIJUANA OR MARIJUANA-INFUSED PRODUCTS, PROCESSING OF MARIJUANA OR MARIJUANA-INFUSED PRODUCTS, RETAIL SALES OF MARIJUANA OR MARIJUANA-INFUSED PRODUCTS OR ANY OTHER ACTIVITIES PURPORTEDLY AUTHORIZED OR ACTUALLY AUTHORIZED UNDER STATE OF WASHINGTON INITIATIVE NO. 502 OR ANY OTHER LAWS OF THE STATE OF WASHINGTON (SPECIFICALLY EXCLUDING MEDICAL MARIJUANA OR MEDICAL CANNABIS) AND THE SUBMISSION OF ANY BUSINESS LICENSE OR LICENSE APPLICATIONS FOR SUCH USES; DEFINING TERMINOLOGY; SETTING SIX (6) MONTHS AS THE EFFECTIVE PERIOD OF THE MORATORIUM, UNLESS OTHERWISE EXTENDED; SETTING A DATE FOR A PUBLIC HEARING ON THE MORATORIUM; PROVIDING FOR SEVERABILITY; DECLARING AN EMERGENCY; ESTABLISHING AN EFFECTIVE DATE; AND PROVIDING FOR OTHER MATTERS RELATED THERETO

WHEREAS, the Town of Fairfield (the “Town”), Spokane County, Washington, is a Town by virtue of the Constitution and the laws of the State of Washington;

WHEREAS, pursuant to chapter 35A.11 RCW, the Town Council (the “Council”) may adopt and enforce ordinances of all kinds relating to and regulating its local or municipal affairs and appropriate to the good government of the Town; and

WHEREAS, the Washington voters approved State of Washington 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 add a new threshold for driving under the influence of marijuana” (2013 c 3 § 1 (Initiative Measure No. 502, approved November 6, 2012, codified in chapter 69.50 RCW); 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” (RCW 69.50.325(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” (RCW 69.50.325(2)); and

WHEREAS, I-502 allows the Washington State Liquor Control Board to license marijuana retailers to “sell usable marijuana and marijuana-infused products at retail in retail outlets” (RCW 69.50.325(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 of the Town, and the

37 Town has the right to file written objections to such license, although the Board has the final decision
38 regarding whether to issue a license (RCW 69.50.331(7)); and

39 WHEREAS, I-502 establishes certain siting limitations on the Washington State Liquor Control Board's
40 issuance of such licenses for any premises that are within 1,000 feet of the perimeter of the grounds of
41 any elementary or secondary school, playground, recreation center or facility, child care center, public
42 park, public transit center or library, or any game arcade, admission to which is not restricted to persons
43 aged twenty-one years or older (RCW 69.50.331(8)); and

44 WHEREAS, on July 3, 2013, the Washington State Liquor Control Board filed official draft rules to
45 implement the provisions of I-502, and communicated its intent to adopt such rules on or around August
46 14, 2013, communicated its intent to begin accepting applications for all license types on or around
47 September 14, 2013, after such rules have become effective, and begin issuing all license types on or
48 around December 1, 2013; and

49 WHEREAS, on August 13, 2013 after five (5) public hearings in the State of Washington to solicit input on
50 the official draft rules to implement the provisions of I-502, the Washington State Liquor Control Board
51 communicated its intent to revise such official rules, re-file such official rules on September 4, 2013,
52 hold at least one (1) public hearing on October 9, 2013, adopt such official rules on October 16, 2013,
53 and begin accepting applications for all license types on November 18, 2013 after such rules have
54 become effective, and begin issuing all license types after December 18, 2013; and

55 WHEREAS, I-502 limits the number of retail outlets to be licensed in each county, for the purpose of
56 making usable marijuana and marijuana-infused products available for sale to adults 21 years of age or
57 over (RCW 69.50.345(2)); and

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

61 WHEREAS, the cultivation, possession or distribution of cannabis marijuana and marijuana products has
62 been and continues to be a violation of federal law through the Controlled Substances Act ("CSA"); and

63 WHEREAS, the Council is aware that in January 2012, the U.S. Department of Justice Drug Enforcement
64 Administration advised a jurisdiction in Washington, in connection with that jurisdiction's attempt to
65 implement E2SSB 5073, that "anyone who knowingly carries out the marijuana activities contemplated
66 by Washington state law, as well as anyone who facilitates such activities, or conspires to commit such
67 violations, is subject to criminal prosecution as provided in the CSA", including the elected officials and
68 employees of that jurisdiction; and

69 WHEREAS, the uses described in I-502 have never been allowed in the State of Washington or Town; and

70 WHEREAS, at this point in time, the Town does not have any regulations addressing the facilities or uses
71 identified in I-502, other than the requirement for a general business license; and

72 WHEREAS, RCW 36.70A.390 and RCW 35.63.200 authorize the Council to adopt an immediate
73 moratorium for a period no longer than six (6) months, unless extended, without a public hearing on the
74 proposal, provided that a public hearing is held within at least sixty (60) days of its adoption; and

75 WHEREAS, moratoriums enacted under RCW 36.70A.390 and/or RCW 35.63.200 are methods by which
76 local governments may preserve the status quo so that new plans and regulations will not be rendered
77 moot by intervening development; and

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

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

84 WHEREAS, a moratorium will preserve the status quo that is necessary to allow the Town a reasonable
85 opportunity to study the extent and validity of the changes in the law, to analyze the impacts and
86 potential liability under the CSA to Town officials and employees who implement and administer a Town
87 regulatory system consistent with I-502 and the rules and regulations to be adopted by the Washington
88 State Liquor Control Board pursuant to I-502 , and to determine an appropriate regulatory framework, if
89 any, for the uses and activities that purport to be authorized under I-502; and

90 WHEREAS, the Council concludes that the Town is authorized to establish a moratorium concerning the
91 uses and activities that purport to be authorized or are actually authorized under I-502, any rules or
92 regulations to be adopted by the Washington State Liquor Control Board pursuant to I-502, or any other
93 laws or regulations of the state of Washington to protect the health, safety and welfare of the citizens of
94 Fairfield; and

95 WHEREAS, the Council desires to impose an immediate six (6) month moratorium on the siting,
96 establishment, location, permitting, operation, licensing or maintenance of facilities, business or other
97 activities involving the cultivation, production, processing, sale or use of marijuana or marijuana-infused
98 product, or any other use or activity purportedly authorized or actually authorized under I-502, any rules
99 or regulations to be adopted by the Washington State Liquor Control Board pursuant to I-502, or any
100 other laws or regulations of the State of Washington; and

101 WHEREAS, the Council adopts the foregoing as its findings of facts justifying the adoption of this
102 Ordinance; and

103 NOW THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF FAIRFIELD, SPOKANE
104 COUNTY, WASHINGTON, AS FOLLOWS:

105 **Section 1. Findings of Fact.** The recitals and findings set forth above are hereby adopted as findings of
106 the Council in support of the moratorium imposed by this Ordinance pursuant to in support of its action

107 as required by RCW 36.70A.390 and RCW 35.63.200. The Council may, in its discretion, adopt additional
108 findings at the conclusion of the public hearing referenced in Section 6 below.

109 **Section 2. Moratorium Imposed.** Pursuant to RCW 35A.63.220 and RCW 36.70A.390, a moratorium is
110 hereby enacted within the Town regarding the siting establishment, location, permitting, operation,
111 licensing or maintenance of facilities, businesses or other activities or uses involving the cultivation,
112 production, processing, sale or use of marijuana or marijuana-infused products, or any Marijuana Use
113 (as defined herein) purportedly authorized or actually authorized under I-502, any rules or regulations
114 adopted by the Washington State Liquor Control Board pursuant to I-502, or any other laws or
115 regulations of the state of Washington. No building permit, occupancy permit, development permit,
116 business license or approval shall be issued for any of the purposes or activities identified in this Section
117 2 shall be granted or accepted while this moratorium is in effect. Any land uses permits, business
118 licenses or other permits or approvals for any of the purposes or activities indentified in this Section 2
119 that are issued as result of error, misunderstanding or by vague or deceptive means during the
120 moratorium are null and void and without legal force and effect.

121 **Section 3. Definition of Marijuana Use.** As used in this Ordinance, the term “Marijuana Use” is defined
122 as any store, agency, organization, dispensary, cooperative, network consultation, operation, company,
123 corporation, or other business entity, group or person, no matter how described or defined, including
124 any associated premises and equipment that has for its purpose or which is used to grow, cultivate,
125 select, measure, process, package, label, deliver, dispense, produce, retail, sell, distribute, or otherwise
126 transfer for consideration or remuneration, or otherwise, marijuana, marijuana-infused products, or
127 marijuana in any form as purportedly authorized or actually authorized under I-502, chapter 69.50 RCW,
128 any rules or regulations to be adopted by the Washington State Liquor Control Board pursuant to I-502,
129 chapter 69.50 RCW, or any other applicable law of the State of Washington; provided, however
130 “Marijuana Use” shall not include any activity involving medical marijuana or medical cannabis
131 purportedly authorized or actually authorized pursuant to chapter 69.51A RCW.

132 **Section 4. No Nonconforming Uses.** No use that purports to be or actually is a Marijuana Use that
133 existed or was otherwise engaged in prior to this Ordinance shall be deemed to have been a legally
134 established use under the provisions of the Ordinance’s, and such use shall not be entitled to claim legal
135 nonconforming status.

136 **Section 5. Duration of Moratorium.** This moratorium shall be in effect for six (6) months, beginning on
137 October 2, 2013 and ending on April 2, 2014, unless an ordinance is adopted amending this Ordinance
138 and rescinding the moratorium before April 2, 2014, or unless the moratorium is otherwise extended in
139 accordance with applicable law.

140 **Section 6. Public Hearing Required.** As required by RCW 36.70A.390 and RCW 35.63.200, the Council
141 will hold a public hearing on October 2, 2013 at 7:00 p.m. or as soon as the business of the Council shall
142 permit and which date is within sixty days of passage of this Ordinance to take public testimony and to
143 consider adopting further findings.

144 **Section 7. Work Plan.** During the moratorium period, Town staff will study the issues concerning
145 Marijuana Uses in the Town. City staff will prepare appropriate revisions to the Town’s ordinances and
146 conduct the public review process as required for amendments to the Fairfield Ordinances.

147 During the moratorium, the Town Clerk/Treasurer is authorized to address issues related to determining
148 the legality of Marijuana Uses as defined herein, including but not limited to review of the conflicts
149 between State of Washington and federal law regarding the legality of Marijuana Uses. In the event
150 such uses are ultimately determined to be legal, the work program should also develop appropriate land
151 use regulations.

152 **Section 8. Declaration of Emergency.** The council hereby finds and declares that there is a potential
153 that persons or entities seeking to engage in Marijuana Uses in the Town could file applications with the
154 Washington State Liquor Control Board and Town or otherwise seek approval under the purported
155 authority or actual authority of I-502, and claim vesting, and/or the presence of Marijuana Uses in the
156 Town could have negative secondary effects if not first addressed by adequate and appropriate
157 regulations, and/or the adoption and adoption and implementation of any rules or regulations by the
158 Town could subject Town officials and employees to liability under the CSA, and therefore an emergency
159 exists which necessitates that this Ordinance become effective immediately in order to preserve the
160 public health, safety and welfare.

161 **Section 9. Effective Date.** This Ordinance shall take effect and be in full force and effect immediately
162 upon passage, as set forth herein, as long as it is approved by a majority plus one of the entire
163 membership of the Council, as required by the RCW 35A.12.130.

164 **Section 10. Repeal.** All ordinances, resolutions, laws, and regulations, or parts thereof in conflict with
165 this Ordinance are, to the extent of said conflict, hereby repealed.

166 **Section 11. Severability.** If any section, sentence, clause or phrase of this Ordinance should be held to
167 be unconstitutional or unlawful by a court of competent jurisdiction, such invalidity or
168 unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause
169 or phrase of this Ordinance.

170

171 PASSED AND APPROVED on this 3rd day of December, 2013.

172 _____

173 Brian Kauffman, Mayor Pro-Tem

174

175 ATTEST:

176 _____

177 Cheryl Loeffler, Clerk/Treasurer

178 STATE OF WASHINGTON)

179)SS:

180 County of Spokane)

181

182 Cheryl Loeffler, being first duly sworn on oath deposes and says:

183 I am the Clerk/Treasurer of the Town of Fairfield, Washington, and the foregoing ordinance entitled "AN
184 ORDINANCE OF THE TOWN OF FAIRFIELD, SPOKANE COUNTY, WASHINGTON, ADOPTING A
185 MORATORIUM ON THE SITING, ESTABLISHMENT, LOCATION, PERMITTING, LICENSING, OPERATION OR
186 MAINTENANCE OF ANY STRUCTURES OR USES RELATING TO THE CULTIVATION OF MARIJUANA,
187 PRODUCTION OF MARIJUANA OR MARIJUANA-INFUSED PRODUCTS, PROCESSING OF MARIJUANA OR
188 MARIJUANA-INFUSED PRODUCTS, RETAIL OF MARIJUANA OR MARIJUANA-INFUSED PRODUCTS OR ANY
189 OTHER ACTIVITIES PURPORTEDLY AUTHORIZED OR ACTUALLY AUTHORIZED UNDER STATE OF
190 WASHINGTON INITIATIVE NO. 502 OR ANY OTHER LAWS OF THE STATE OF WASHINGTON (SPECIFICALLY
191 EXCLUDING MEDICAL MARIJUANA OR MEDICAL CANNABIS) AND THE SUBMISSION OF ANY BUSINESS
192 LICENSE OR LICENSE APPLICATIONS FOR SUCH USES; DEFINING TERMINOLOGY; SETTING SIX (6)
193 MONTHS AS THE EFFECTIVE PERIOD OF THE MORATORIUM, UNLESS OTHERWISE EXTENDED; SETTING A
194 DATE FOR A PUBLIC HEARING ON THE MORATORIUM; PROVIDING FOR SEVERABILITY; DECLARING AN
195 EMERGENCY; ESTABLISHING AN EFFECTIVE DATE; AND PROVIDING FOR OTHER MATTERS RELATED
196 THERETO" is the true and correct copy of the Town of Fairfield's Ordinance numbered 13-08 and that
197 the same was posted and published according to law.

198

199 _____

200 Cheryl Loeffler, Clerk/Treasurer

201

202 SUBSCRIBED AND SWORN TO BEFORE ME THIS 3rd DAY OF December, 2013.

203

204 _____

205 _____

206 Notary Public in and for the

207 State of Washington, residing at _____

208 My Commission expires _____