WHEREAS, Initiative 502 was approved by the voters of this State at the General Election held in November 2012, said Initiative approving and making legal, with restrictions, so-called "recreational marijuana;" and

WHEREAS, Initiative 502 was codified into Chapter 69.50 RCW, the Uniform Controlled Substances Act; and

WHEREAS, marijuana and marihuana producers, processors and retailers are defined in state law at RCW 69.50.101, said definitions as currently stated there or as may hereafter be amended being hereby incorporated into this and any Ordinance or development regulation that the Jefferson County Commissioners may enact; and

WHEREAS, Initiative 502 directed the Washington State Liquor Control Board ("WSLCB") to develop, for example, A) rules and regulations to determine the number of retailers by county and B) licensing and other regulatory measures for the production, processing and retailing of marijuana for non-medical purposes; and

WHEREAS, the WSLCB adopted final rules on October 16, 2013 for marijuana producers, processors and retailers, said regulations being codified at Chapter 314-55 WAC; and

WHEREAS, the regulations of Ch. 314-55 WAC went into effect on November 16, 2013 and the WSLCB began to accept applications for recreational marijuana producers, processors and retailers on November 18, 2013, said application window being open for one month with some exception to that time limit; and

WHEREAS, only the WSLCB is authorized to issue licenses for the production, processing or retailing of recreational marijuana with the caveat that the WSLCB notifies local governments such as counties and cities of applicants seeking to locate in the jurisdiction so notified; and

WHEREAS, WAC 314-55-020(11) explicitly recognizes the authority of locally adopted rules or ordinances to regulate licensed marijuana businesses, such locally adopted ordinances including in part local building and fire codes, and zoning ordinances; and
WHEREAS, on January 16, 2014, the Washington State Attorney General issued an Opinion regarding local regulation of state-licensed marijuana producers, processors and retailers (AGO 2014 No. 2), concluding in part, “... that I-502 left in place the normal powers of local governments to regulate within their jurisdictions. ... Local governments have broad authority to regulate within their jurisdictions, and nothing in I-502 limits that authority with respect to licensed marijuana businesses;” and

WHEREAS, County staff, including persons from planning, law enforcement, public health, prosecution, as well as the County Administrator, met during 2013 to determine if any changes to the County’s current regulatory structure would be required in order to accommodate the then-anticipated recreational marijuana business uses at a scale, intensity and locations that would be consistent with this county’s countywide planning policies, its Comprehensive Plan and the generally rural aesthetic and character of unincorporated Jefferson County; and

WHEREAS, pursuant to JCC 18.10.010 the production of marijuana is a form of agriculture, a use that the county’s land use planning seeks to encourage in a wide variety of ways; and

WHEREAS, Jefferson County values and supports local agriculture, locally grown food, and the vitality of local farms, the farm economy, farm employment and farm lifestyles; and

WHEREAS, Jefferson County has long demonstrated its commitment to supporting agriculture by previously adopting policies and regulations supporting agricultural activities, including but not limited to adopting comprehensive plan amendments to designate and rezone agricultural lands and regulations for Agricultural Activities and Accessory Uses, both of which were developed and adopted in 2004 after extensive public involvement, and which regulations were subsequently incorporated in the 2006 Omnibus UDC Revisions, winning the Washington Governor’s Smart Growth Award in 2006; and

WHEREAS, such supportive agricultural policies and regulations include provisions of Jefferson County Code Title 18.20.030, including:

- agricultural activity is an allowed use within all zoning designations;
- commercial agricultural activity in certain circumstances is exempt from stormwater management permitting for primary agricultural activities;
- agriculture activity is exempt for obtaining building permits in certain circumstances;
- Agriculture occurring on all rural land use districts except Rural Residential 1.5 are protected by so-called “right to farm” rules that provide notice to adjacent, non-agricultural parcels that agricultural activities do not constitute a nuisance;
- Accessory uses in Agricultural zoned land are exempt from obtaining building permits in certain circumstances;
- Accessory uses include commercial production and sales of locally grown or produced agricultural products, construction of structures, farm worker housing, processing, packaging, wholesale and retail sales of agricultural products, commercial sales, repair and maintenance of farm equipment, storage of vehicles, equipment, materials or products not related to agriculture, agritourism, tourism events not related to agriculture, classes, lumber mills, harvesting, sawing, processing, assembling and selling lumber; and
WHEREAS, during the weekly open public meeting of the County Commission held on Monday October 14, 2013 staff briefed the Commission, informing them, according to the approved minutes for that meeting, “that existing regulations of the County and the WSLCB should be enough,” based on the nature of marijuana operations then anticipated by the County, and thereafter no amendment or further review of the County’s regulations was undertaken; and

WHEREAS, during the license application window which subsequently began November 18, 2013, the WSLCB has, with respect to unincorporated Jefferson County, received several dozen state license applications from persons and firms seeking to produce marijuana and/or process it AND the vast majority (approximately 90%) of the applicants seeking to locate in unincorporated Jefferson County have requested state licenses to both produce and process marijuana; and

WHEREAS, the County has received notice from the WSLCB of these license applications and has in response informed the WSLCB of whether the County objects to either the type of state license (production, processing, retailing) or the location of the license; and

WHEREAS, the applications to the state for producer and/or processor licenses in unincorporated Jefferson County are for locations within various land use designations such as 1) agricultural lands 2) light industrial/commercial, 3) light industrial, 4) rural residential and 5) rural forest; and

WHEREAS, each of those land use designations listed immediately above has a distinct purpose (and related public policy behind it) in the county’s Comprehensive Plan and development regulations and thus raise different compatibility issues in relation to the impacts from the production or processing of recreational marijuana unique to each particular land use designation; and

WHEREAS, the County’s current development regulations in the land use arena do not impose any land use permitting requirements on growing marijuana, although the processing of marijuana in most land use designations requires a County land use permit as an accessory use or “cottage industry;” and

WHEREAS, state, regional and local regulations and/or permitting regarding potable water, adequate water, waste water and surface water discharges, the proper handling and disposal of solid waste, food processing, and air quality are, and always would be, applicable to any applicant seeking to enter into and undertake any one or some of the three recreational marijuana businesses available to citizens through the WSLCB licensing process; and

WHEREAS, citizens have addressed the County Commission during the public comment period of the Commission’s open public meetings expressing great concern that the production of marijuana is not typical agriculture and that both production and processing should be the subject of additional development regulations not currently found in the applicable land use and development regulations; and
WHEREAS, the production (growing) of recreational marijuana must comply with numerous state regulations such as enclosure with an 8 foot high fence and security lighting that make it distinguishable from more traditional forms of agriculture; and

WHEREAS, based on actual state license applications reviewed by the County and still pending before the state, it now appears the potential high profitability of recreational marijuana is attracting investments in marijuana operations and developments of a larger scale and higher intensity than the County previously anticipated in some land use classifications, said larger projects having resultant impacts not previously known or planned for, again making it unlike the more traditional existing agriculture found in Jefferson County; and

WHEREAS, recreational marijuana production and processing may result in a scale and intensity of activities that is inconsistent with the Jefferson County Comprehensive Plan policies to maintain rural character in rural residential lands; and

WHEREAS, recreational marijuana production and processing may be done at a scale and intensity exceeding that which has occurred historically, and may result in impacts such as increased traffic, noise, light, hours of activity, odors, water supply withdrawals, and surface and ground water pollution; and

WHEREAS, in order to balance the supportive goals and policies for agricultural uses, including but not limited to recreational marijuana, with comparable support for other land uses, it is appropriate to review regulations for the potential scale and intensity of recreational marijuana under the County’s existing regulations and make such regulatory changes as found necessary so that potential impacts between incompatible uses can be avoided, reduced or mitigated, for the benefit of the health, safety and welfare of all Jefferson County citizens and businesses; and

WHEREAS, the County Commission acknowledges that the citizens of Jefferson County supported the approval of Initiative 502 by almost a 2-1 margin, and in recognition of the clear will of its citizenry, does not intend to undo Initiative 502 by the eventual enactment of regulations regarding recreational marijuana that would make initiating and undertaking such businesses in Jefferson County impractical; and

WHEREAS, in order to provide the County the opportunity to review and amend its regulations that would apply to marijuana production and processing, the Board of County Commissioners deem it to be in the public interest to establish a moratorium intended to temporarily prohibit the acceptance of any development permit application that would be necessary for the siting, location or operation of recreational marijuana producing and processing at certain locations, and said moratorium was duly passed by the County Commission on August 11, 2014; and

WHEREAS, the initial moratorium and this moratorium extension is authorized by RCW 36.70.795, RCW 36.70A.390 and Article 11, § 11 of the Washington State Constitution as long as a work plan for the County’s planning agency is made part of this Ordinance;
NOW, THEREFORE, BE IT ORDAINED by the Board of Commissioners for Jefferson County as follows:

Section 1. Moratorium. There shall be in unincorporated Jefferson County a moratorium with respect to:

- Production and processing of marijuana at a parcel or parcels designated AP-20 Prime Agricultural Land, (agricultural lands of long-term significance), or AL-20 agricultural lands of local importance;
- Production and processing of marijuana at a parcel or parcels designated Forest Resource Lands, including CF-80 Commercial Forest; RF-40 Commercial Forest; or IF In-holding Forest;
- Indoor production of marijuana at any parcel of land greater than five (5) acres in size and designated as Rural Residential 1:10 or Rural Residential 1:20;
- Indoor production of marijuana in a temporary structure at any parcel of land greater than five (5) acres in size and designated as Rural Residential 1:5;
- Outdoor production of marijuana at any sized parcel designated Rural Residential 1:5, Rural Residential 1:10 or Rural Residential 1:20;
- Processing of marijuana as a Cottage Industry at any parcel sized one acre or more designated Rural Residential 1:5, Rural Residential 1:10 or Rural Residential 1:20;
- Production and processing of marijuana at a parcel or parcels designated Rural Industrial, including RI-Resource Industrial; LI/C – Light Industrial/Commercial (Glen Cove), Light Industrial -(Glen Cove); LI/M – Light Industrial/Manufacturing; HI- Heavy Industrial.

Section Two. Effect of Moratorium. This moratorium neither impacts any permit applications relating to recreational marijuana licenses as listed in RCW 69.50.325 that have been deemed “substantially complete” by Jefferson County nor alters, amends, repeals or revises any other applicable statute, regulation or code provision applicable to such substantially complete applications.

Section Three. Duration. The moratorium adopted by this Ordinance shall become effective upon expiration of the moratorium enacted in Ordinance #07-0811-14 and shall be effective for four months, measured from the expiration date for the moratorium enacted in Ordinance #07-0811-14. It is intended that there shall be no lapse in the moratoria, i.e., no period of time when neither #07-0811-14 nor this Ordinance is in effect.

Section Four. Public Hearing. Pursuant to state law, a public hearing regarding this moratorium was held by the County Commission on January 26, 2015.
Section Five. Work Plan. The following work plan is adopted:

- Generate draft revisions to the County’s development regulations and present them for Planning Commission review at the meeting of January 14, 2015; with final recommendation by the Planning Commission to the County Commission within 60 days of enactment of this Ordinance.

- Present final regulations for Board of County Commissioners action within 120 days of enactment of this Ordinance.

Section Six. Findings. The Jefferson County Commission hereby adopts the above recitals (the “WHEREAS” statements) as its findings of fact in support of this Ordinance.

Section Seven. Severability. The provisions of this Ordinance are declared separate and severable. If any provision of this Ordinance or its application to any person or circumstances is held invalid, then the remainder of this Ordinance or application of its provisions to other persons or circumstances shall remain valid and unaffected.

ADOPTED by the Jefferson County Board of County Commissioners at a regular meeting thereof this 9th day of February, 2015 at 11:37 a.m.

APPROVED AS TO FORM:

David Alvarez
Deputy Prosecuting Attorney

ATTEST:

Carolyn Avery
Deputy Clerk of the Board

JEFFERSON COUNTY
BOARD OF COMMISSIONERS

David Sullivan, Chair

Phil Johnson, Member

Kathleen Kler, Member