

City of Cheney
609 Second Street
Cheney, Washington 99004

**CITY OF CHENEY, WASHINGTON
ORDINANCE NO. W-17**

**AN ORDINANCE ESTABLISHING INTERIM ZONING
AND LAND USE REGULATIONS TO ADDRESS
INITIATIVE 502 AND PROVIDING FOR OTHER
MATTERS INCLUDING ESTABLISHING AN EFFECTIVE
DATE**

WHEREAS, the City of Cheney has the authority to adopt interim zoning regulations pursuant to RCW 35A.63.220; and

WHEREAS, on November 6, 2012, Initiative 502 was passed by the voters of the State of Washington, providing a framework under which marijuana producers, processors, and retailers can become licensed by the State of Washington; and

WHEREAS, Initiative 502 directs the Washington State Liquor Control Board (LCB) to develop rules and regulations to:

1. Determine the number of producers, processors and retailers of marijuana by county;
2. Develop licensing and other regulatory measures;
3. Issue licenses to producers, processors, and retailers at locations which comply with the Initiative's distancing requirements prohibiting such uses within one thousand feet of schools and other designated public facilities; and
4. Establish a process for the City to comment prior to the issuance of such licenses.

WHEREAS, the LCB recently adopted final rules on October 16, 2013 to begin issuance of marijuana producer, processor and retail licenses to qualified applicants in December, 2013; and

WHEREAS, after receiving public input regarding the proposed rules, the LCB postponed adoption of final rules to allow more time to clarify certain aspects of the I-502

implementation including, but not limited to, limits or caps on the amount of marijuana that will be grown and the number of retail stores to be licensed; and

WHEREAS, the final rules are scheduled to take effect in November of 2013; and

WHEREAS, Initiative 502 prohibits marijuana-related uses within 1,000 feet of the perimeter of certain uses and buildings, including elementary or secondary school, playground, recreation center or facility, child care center, Public Park, public transit center, library or arcade where admission is not restricted to those age 21 and older; and

WHEREAS, LCB-licensed marijuana businesses must comply with land use and zoning restrictions of local jurisdictions; and

WHEREAS, the adoption of land use and zoning regulations is a valid exercise of the City's police power as authorized by RCW 35A.63.100; and

WHEREAS, Section 69.51A.140 RCW, enacted as part of Washington's medical cannabis act, delegates authority to cities and towns to adopt and enforce zoning requirements, business licensing requirements, health and safety requirements, and business taxes related to marijuana production, processing and dispensing as exercises of the City's police powers and not necessarily limited to medical marijuana-related uses; and

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

WHEREAS, marijuana production, processing, and retailing uses should be immediately addressed in the City's zoning code, even if the full extent of the impacts not fully identified through the recent LCB's adoption of its licensing regulations and procedures; and

WHEREAS, unless the City acts immediately to address marijuana-related uses, such uses may be able to locate in the City without regulation and thereby have adverse impacts on the City and its citizens; and

WHEREAS, the City deems it in the public interest to impose interim zoning regulations for a period of six months in order to investigate this issue further and obtain regulatory clarity and guidance from the LCB's rules and Cheney's citizens;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CHENEY, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Findings of Fact. The City Council adopts the above recitals as findings of fact in support of its action under RCW 36.70A.390 and RCW 35A.63.220. The Cheney City Council finds that it is necessary to immediately amend its Municipal Code on an interim basis to ensure that the City remains compliant with the requirements of Ch. 36.70A RCW, addresses

Laws of 2013, ch. 3 enacted by I-502, and establishes local regulations that satisfy the August 29, 2013 U.S. Department of Justice mandate for robust controls that do not threaten federal enforcement priorities. There is a need for local development regulations, because WAC 314-55-020(11) states that the issuance of a marijuana license by the Washington State Liquor Control Board "shall not be construed as a license for, or an approval of, any violations of local rules or ordinances including, but not limited to: Building and fire codes, zoning ordinances, and business licensing requirements."

Section 2. Comprehensive Plan. The Cheney City Council finds that: (1) the amendments herein conform to the requirements of Chapter 36.70A RCW; (2) are consistent with and implement the City of Cheney's comprehensive plan, as amended; (3) and advance state and local interests .

- A. Chapter 3 of the Comprehensive Plan details existing land uses and contains both an existing land use map and a current zoning map that identifies existing uses by type.
- B. The Comprehensive Plan further states that residential districts of the City of Cheney are intended primarily for residential development, commercial districts of the city are intended primarily for commercial uses, light industrial districts are intended for industrial and other commercial uses that do not generate excessive noise, odors or other nuisances and heavy industrial districts are intended for uses that may create a greater degree of nuisances to surrounding uses which should be separated and controlled to protect the public health and safety. The primary purposes of those districts are further explained in chapter 21 of the Cheney Municipal Code which implements the comprehensive plan.
- C. Figure 3.07 of the Comprehensive Plan identifies future land uses. The types of land uses allowed on particular sites should minimize and mitigate land use conflicts and establish better organization of the community.
- D. The aforementioned goals, objectives, policies and elements of the comprehensive plan indicate that marijuana production facilities, marijuana processing facilities, marijuana retail outlets, and similar facilities are inappropriate for residential districts of the City of Cheney and should be limited to appropriate commercial and industrial zones.

Section 3. The Cheney City Council finds that marijuana production facilities, marijuana processing facilities, marijuana retail outlets, and similar facilities are inappropriate for residentially zoned properties under Laws of 2013, ch. 3 enacted by I-502, and Chapter 314-55 WAC and should be reasonably conditioned in other areas of the City.

- A. Laws of 2013, ch. 3, § 4, codified as RCW 69.50.325, provides that marijuana producer's license, marijuana processor's licenses, and marijuana retailer's licenses shall be regulated by the Washington State Liquor Control Board. Laws of 2013, ch. 3, § 6(4), codified as RCW 69.50.331(4) states that every license issued under that act shall be subject to all conditions and restrictions adopted by the Washington State Liquor Control Board. Laws

of 2013, ch. 3, § 9, codified as RCW 69.50.342, authorize the Washington State Liquor Control Board to adopt rules to implement that act. WAC 314-55-015(5) states that the Washington State Liquor Control Board "will not approve any marijuana license for a location where law enforcement access, without notice or cause, is limited. This includes a personal residence."

- B. Laws of 2013, ch. 3 § 6(8), codified as RCW 69.50.331(8), manifests state intent to prevent distribution of marijuana to minors.
- C. Residential zones in the City of Cheney consist primarily of personal residences and contain locations throughout such zones where children under the age of eighteen (18) years reside. Properties in residential zones are therefore not appropriate locations for marijuana production facilities, marijuana processing facilities, marijuana retail outlets, and similar facilities.
- D. The City Comprehensive Plan in Chapter 3 entitled, "Land Use" contains goals which are intended to reduce the impacts from various uses and thereby keep Cheney's neighborhoods safe, vital and attractive through the type and character of development which maintains and improves neighborhoods, community services and the built environment. In furtherance of the above, marijuana production and processing should take place in fully enclosed secure indoor facilities or greenhouse(s) with rigid walls, roof, and doors. Production and processing within fully enclosed structures will address and contain impacts upon the surrounding community, such as odor, noise, light, glare, security, waste disposal, and other land use impacts that if conducted outdoors are likely to be incompatible with adjacent and surrounding uses in a manner which is inconsistent with the City's Comprehensive Plan.

Section 4: The Cheney City Council finds that the special requirements imposed by Chapter 314-55 WAC and the need to mitigate potential impacts that marijuana production facilities, marijuana processing facilities, marijuana retail outlets, and similar facilities may have upon neighboring properties dictates that such uses should only be allowed, where appropriate, under a conditional use permit.

Section 5. Interim Regulations Established. Section 21.32 (General Commercial) of the Cheney Municipal Code is amended as follows (added terms are bolded and italicized and removed terms are stricken):

A. 21.32.050 Conditional Uses

The following uses are allowed in the C-2 zone if they comply with the development standards of this title and are approved through the conditional use review process of chapter 21.58:

- (1) Animal hospitals, clinics, kennels and veterinary offices when within a completely soundproof building constructed substantially in accordance with standards of the

American Animal Hospital Association, provided there will be no objectionable odors or noise outside its walls or other nuisance or health hazard;

- (2) Open display or storage of materials available for retail sale;
- (3) Drive-in theaters;
- (4) Light manufacturing, assembling, warehousing or fabricating uses which are wholly contained within one or more buildings, and which do not detract from the commercial character of the area;
- (5) Reserved;
- (6) Other structures greater than 85 feet in height;
- (7) Residences located on the ground floor adjoining First Street from Betz Road to Salnave Road;
- (8) Group homes;
- (9) Fraternities and sororities;
- (10) Churches;
- (11) Hospitals;
- (12) Nursing homes;
- (13) Residential developments with a lot size of less than 1,000 square feet per dwelling unit;
- (14) Zero setback on interior side yards for residential uses;
- (15) Secure community transition facilities operated by the department of social and health services, subject to the following conditions:
 - (A) The parcel containing the facility shall not be adjacent to, immediately across the street or parking lot from, or within the line of sight of an identified, pre-existing "risk potential facility" which is defined as: public and private schools, school bus stops, licensed daycare, licensed preschools, public parks, publicly dedicated trails, sports fields, playgrounds, recreational and community centers, churches, synagogues, temples, mosques, and public libraries.
 - (B) The secure community transition facility shall meet any applicable state, federal, and local licensing for a facility authorized by state, federal or local

authorities to confine and treat sex offenders through a rehabilitation treatment program for those conditionally released from total confinement under a court ordered civil commitment.

- (C) Before issuance of a conditional use permit, the applicant shall have complied with all applicable requirements for the siting of an essential public facility of a statewide or regional nature in Spokane County.
- (D) The secure community transition facility shall be staffed with a department of social and health services employee specially trained in sex offender treatment.
- (E) Notification of intended use must be mailed to all residents and property owners within a 300 foot radius of the secure community transition facility and notice to the community must be in accordance with public notification requirements for conditional use permits stipulated in section 21.58.020.

(16) Marijuana retailer, subject to the following conditions;

- (A) Marijuana retailers must comply with all requirements of state law and the Washington State Liquor Control Board's regulations.***
- (B) Marijuana retailers shall not locate in the SR-2 Semi Rural Residential, CALR Critical Area Limited Residential, R-1 Single Family Residential, R-2 Two Family Residential, R-3 Multi-Family Residential, R-3H High Density Multi-Family Residential, Membership Lodging Special Overlay District, NCS Neighborhood Shopping Center, C-1 Downtown Commercial, BP Business Park, I-L Light Industrial, and P Public zones.***
- (C) Marijuana retailers shall not locate in a building in which non-conforming retail uses have been established in any residential or office zone.***
- (D) Marijuana retailers shall not operate as an accessory to a primary use or as a home occupation.***
- (E) Marijuana retailers shall not locate within one thousand feet (using a straight line measurement) 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.***
- (F) As a conditional use, the planning review process for marijuana producers, marijuana processors and marijuana retailers shall include a determination and finding as to whether or not the proposed use is compatible with adjoining uses. The facility shall be designed, located, constructed and buffered to blend in with its surroundings and mitigate significant adverse***

impacts on adjoining properties and the community. Special attention shall be given to minimizing odor, noise, light, glare and traffic impacts.

(G) Marijuana producers, marijuana processors and marijuana retailers are required to acquire all necessary business licenses and are required to comply with municipal tax regulations and all other applicable City ordinances.

Section 6. Interim Regulations Established. Section 21.34 (Business Park) of the Cheney Municipal Code is amended as follows (added terms are bolded and italicized and removed terms are stricken):

A. 21.34.040 Conditional uses.

The following uses are allowed in the BP zone if they comply with the development standards of this title and are approved through the conditional use review process of chapter 21.58:

(1) Retail sales and service. Retail sales and service firms are involved in the sale, lease or rent of new or used products to the general public. They may also provide personal services or entertainment, or provide product repair or services for consumer and business goods. Accessory uses may include offices, storage of goods, manufacture or repackaging of goods for on-site sale, and parking.

(2) *Marijuana production and processing facilities, subject to the following conditions;*

(A) Marijuana producers and marijuana processors must comply with all requirements of state law and the Washington State Liquor Control Board's regulations.

(B) Marijuana producers and processors may locate only in the BP (Business Park) or I-L (Light Industrial) zone following a Conditional Use Permit Review.

(C) Marijuana producers and processors shall not locate on a site or in a building in which non-conforming production or processing uses have been established in any zone other than the BP (Business Park) or I-L (Light Industrial) zone.

(D) Marijuana producers and processors shall not operate as an accessory to a primary use or as a home occupation.

(E) ~~Marijuana producers and processors may locate in the same building, and all production and/or processing activities shall occur within an enclosed structure.~~

(F) Marijuana producers and processors shall not locate within one thousand feet (using a straight line measurement) 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.

(G) As a conditional use, the planning review process for marijuana producers, marijuana processors and marijuana retailers shall include a determination and finding as to whether or not the proposed use is compatible with adjoining uses. The facility shall be designed, located, constructed and buffered to blend in with its surroundings and mitigate significant adverse impacts on adjoining properties and the community. Special attention shall be given to minimizing odor, noise, light, glare and traffic impacts.

(H) Marijuana producers, marijuana processors and marijuana retailers are required to acquire all necessary business licenses and are required to comply with municipal tax regulations and all other applicable City ordinances.

Section 7. Interim Regulations Established. Section 21.36 (Light Industrial) of the Cheney Municipal Code is amended as follows (added terms are bolded and italicized and removed terms are stricken):

A. 21.36.040 Conditional Uses

The following uses are allowed in the I-1 zone if they comply with the development standards of this title and are approved through the conditional use review process of chapter 21.58:

- (1) Salvage yards;
- (2) Structures greater than 85 feet in height;
- (3) Sand and gravel mining operations and activities;
- (4) Any other nonresidential use not specifically mentioned which is not in conflict with the declaration of essential use.
- (5) *Marijuana production and processing facilities, subject to the following conditions;*
 - (A) *Marijuana producers and marijuana processors must comply with all requirements of state law and the Washington State Liquor Control Board's regulations.*
 - (B) *Marijuana producers and processors may locate only in the BP (Business Park) or I-L (Light Industrial) zone following a Conditional Use Permit Review.*

- (C) *Marijuana producers and processors shall not locate on a site or in a building in which non-conforming production or processing uses have been established in any zone other than the BP (Business Park) or I-L (Light Industrial) zone.*
- (D) *Marijuana producers and processors shall not operate as an accessory to a primary use or as a home occupation.*
- (E) ~~*Marijuana producers and processors may locate in the same building, and all production and/or processing activities shall occur within an enclosed structure.*~~
- (F) *Marijuana producers and processors shall not locate within one thousand feet (using a straight line measurement) 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.*
- (G) *As a conditional use, the planning review process for marijuana producers, marijuana processors and marijuana retailers shall include a determination and finding as to whether or not the proposed use is compatible with adjoining uses. The facility shall be designed, located, constructed and buffered to blend in with its surroundings and mitigate significant adverse impacts on adjoining properties and the community. Special attention shall be given to minimizing odor, noise, light, glare and traffic impacts.*
- (H) *Marijuana producers, marijuana processors and marijuana retailers are required to acquire all necessary business licenses and are required to comply with municipal tax regulations and all other applicable City ordinances.*

Section 8. Interim Regulations Established. Section 21.51 (Recreational Marijuana) of the Cheney Municipal Code is amended as follows (added terms are bolded and italicized and removed terms are stricken):

A. **21.51.010** *Purpose.*

The purpose of this chapter is to address initiative 502 passed by Washington voters at the November 6, 2012 general election (Laws of 2013, ch. 3) and Chapter 69.51A of the Revised Code of Washington by identifying land use zones and establishing regulations relating to locations where marijuana processing facilities, marijuana production facilities, marijuana retail outlets, and similar facilities are not prohibited in the City of Cheney. Nothing herein shall be construed as authority to violate any United States law. Affirmative terminology used in this chapter regarding permitting, licensing, authorization, and similar terms, shall not be construed as approval, support, endorsement, or encouragement of the activities therein addressed. Such terms shall instead be construed only to describe circumstances under which there is conditional

absence of local prohibition. The City of Cheney does not hereby intend to aid, abet, counsel, command, induce or procure any offense against the United States. The City of Cheney also does not hereby intend to conspire with any marijuana producer, processor, or retailer to commit any offense against the United States. The purpose of this chapter is to establish local laws which protect public health, safety, and welfare to the greatest extent allowed by a Washington state law that cannot be reconciled with United States law. Nothing herein shall be construed to supersede United States law prohibiting the possession, use, manufacture, or sale of marijuana.

B. 21.51.020 Definitions

- 1. The terms “marijuana”, “marijuana-infused products”, “marijuana producer”, “marijuana processor”, and “marijuana retailer” shall have the meaning set forth in RCW 69.50.101.*
- 2. "Marijuana" or "Cannabis" 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. The term 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 there from), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.*
- 3. "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 useable marijuana and marijuana-infused products for sale in retail outlets, and sell useable marijuana and marijuana-infused products at wholesale to marijuana retailers.*
- 4. "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.*
- 5. "Marijuana retailer" means a person licensed by the state liquor control board to sell useable marijuana and marijuana-infused products in a retail outlet.*
- 6. "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.*
- 7. "Useable marijuana" means dried marijuana flowers. The term "useable marijuana" does not include marijuana-infused products.*

8. *“Retail outlet” means a location licensed by the State Liquor Control Board for the retail sale of useable marijuana and marijuana-infused products.*

C. 21.51.030 *Conditional Uses*

The uses that may be conditionally allowed in the zones identified in 21.32 (General Commercial), 21.34 (Business Park) and 21.36 (Light Industrial) are restricted to those zones and may not be allowed in other zones as a non-conforming situation, or by rezone, variance, special use permit, special exception, or any other type of license or authorization, of any kind whatsoever. Collective gardens, marijuana processing facilities, medical cannabis processing facilities, marijuana production facilities, medical cannabis production facilities, marijuana retail outlets, and medical cannabis dispensaries are not allowed in any zone except those that are outlined above. The applicant is responsible to mail the Notice of Application for any Conditional Use Permit to all property owners within 1000' feet of the property that is the subject of the application.

D. 21.51.040 *Rezoning Prohibited*

No property located in a zoning district where collective gardens, marijuana processing facilities, medical cannabis processing facilities, marijuana production facilities, medical cannabis production facilities, marijuana retail outlets, and medical cannabis dispensaries are prohibited may be rezoned to a zoning classification in which such uses might be conditionally allowed. No property located in a zoning district where certain marijuana related facilities are conditionally allowed and other types of marijuana facilities are prohibited may be rezoned to a zoning classification in which such prohibited uses might be conditionally allowed.

E. 21.51.050 *Buffer zones*

No collective garden, marijuana processing facility, medical cannabis processing facility, marijuana production facility, medical cannabis production facility, marijuana retail outlet, or medical cannabis dispensary may be located within one thousand feet (1000') 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. The distance shall be measured as the shortest straight line distance from the property line of the premises upon which the garden, facility, outlet, or dispensary is located to the property line of the elementary or secondary school, playground, recreation center or facility, child care center, public park, public transit center, library, or any game arcade. The foregoing are continuing requirements in order to maintain a permit.

F. 21.51.060 *Total number of conditional use permits limited.*

No more than a maximum total of two (2) conditional use permits may be issued for marijuana retail outlets and medical cannabis dispensaries in the City of Cheney regardless of the number of applicants. These are not separate limits. For purposes of this limitation, marijuana retail outlets and medical cannabis dispensaries are deemed to be equivalent to each other. No application for a marijuana retail outlet or a medical cannabis dispensary may be approved during any period when two (2) conditional use permits, in any combination, are already in effect.

G. 21.51.070 General requirements

- 1. Collective gardens, marijuana production facilities, and medical cannabis production facilities must satisfy all of the requirements for marijuana production under regulations and rules promulgated by the state liquor control board.*
- 2. Marijuana processing facilities and medical cannabis production facilities must satisfy all of the requirements for marijuana processing under regulations and rules promulgated by the state liquor control board.*
- 3. Marijuana retail outlets and medical cannabis dispensaries must satisfy all of the requirements for marijuana retailers under regulations and rules promulgated by the state liquor control board.*
- 4. The foregoing are continuing requirements in order to maintain a permit.*

~~**H. 21.51.080 Production facility requirements.**~~

~~*Collective gardens, marijuana production facilities, and medical cannabis production facilities must be either:*~~

- ~~*1. Fully enclosed secure indoor facilities or greenhouses with rigid walls, roofs, and doors; or*~~
- ~~*2. Enclosed by a secure physical barrier, other structures enclosed by a secure physical barrier or an expanse of open or cleared ground enclosed by a secure physical barrier. All outdoor production must be enclosed by a sight obscuring wall or fence at least eight feet (8') high.*~~
- ~~*3. The foregoing are continuing requirements in order to maintain a permit.*~~

~~**I. 21.51.090 Processing facility requirements.**~~

~~*Marijuana processing facilities and medical cannabis production facilities must be fully enclosed secure indoor facilities. The foregoing is a continuing requirement in order to maintain a permit.*~~

~~H.J.~~ 21.51.100 *Outlet and dispensary requirements.*

1. *Marijuana retail outlets and medical cannabis dispensaries must be fully enclosed secure indoor facilities.*
2. *Marijuana retail outlets and medical cannabis dispensaries shall not display any signage in a window, on a door, or on the outside of the premises of any retail outlet or dispensary that is visible to the general public from a public right-of-way, other than a single sign no larger than one thousand six hundred (1600) square inches identifying the retail outlet by the licensee's business or trade name. Signs must also meet all other requirements of City of Cheney sign regulations; provided that signage limitations and restrictions established by this section or rules and regulations promulgated by the state liquor control board shall supersede less restrictive city sign regulations.*
3. *Marijuana retail outlets and medical cannabis dispensaries shall not display useable marijuana or marijuana infused products in a manner that is visible to the general public from a public right-of-way.*
4. *The foregoing are continuing requirements in order to maintain a permit.*

~~I.K.~~ 21.51.110 *Permit revocation.*

1. *Mandatory revocation. A permit for a collective garden, marijuana processing facility, medical cannabis processing facility, marijuana production facility, medical cannabis production facility, marijuana retail outlet, or medical cannabis dispensary shall be revoked whenever:*
 - A. *The location of the collective garden, marijuana processing facility, medical cannabis processing facility, marijuana production facility, medical cannabis production facility, marijuana retail outlet, or medical cannabis dispensary no longer satisfies buffer zone requirements.*
 - B. *The owner or operator of the collective garden, marijuana processing facility, medical cannabis processing facility, marijuana production facility, medical cannabis production facility, marijuana retail outlet, or medical cannabis dispensary no longer holds a valid license from the state liquor control board.*
2. *Discretionary revocation. A permit for a collective garden, marijuana processing facility, medical cannabis processing facility, marijuana production*

facility, medical cannabis production facility, marijuana retail outlet, or medical cannabis dispensary may be revoked whenever a permit holder fails to satisfy any permit condition other than one requiring mandatory revocation.

- 3. Hearing. Permit holders shall be given an opportunity for a hearing with the Cheney Hearing Examiner before a permit is revoked. Failure to appear at a scheduled hearing shall waive any hearing and constitute grounds for entry of a default order of revocation.*

J.E. 21.51.120 *Notice of application/hearing.*

In addition to notice of application/proposal required by Cheney Municipal Code section 23.030 and notice of hearing required by Cheney Municipal Code section 23.100, notice of application/proposal and notice of hearing shall be delivered or mailed to the record owner(s) of property, as shown by the records of the Cheney County Assessor, which is within one thousand feet (1000') of the proposal site. The distance shall be measured as the shortest straight line distance from the property line of the proposal site to the property line of the other property.

~~K.M.~~ **21.51.130** *Additional processing fees.*

In addition to all other fees that apply, the applicant for a permit for a collective garden, marijuana processing facility, medical cannabis processing facility, marijuana production facility, medical cannabis production facility, marijuana retail outlet, or medical cannabis dispensary shall pay an extra fee of three hundred dollars (\$300.00) to defray additional costs incurred to process such applications.

~~L.N.~~ **21.51.140** *Violations.*

- 1. It is unlawful to create or participate in a collective garden located in the SR-2 Semi Rural Residential, the CALR Critical Area Limited Residential, the R-1 Single Family Residential, the R-2 Two Family Residential, the R-3 Multi-Family Residential, the R-3H High Density Multi-Family Residential, the Membership Lodging Special Overlay District, the NCS Neighborhood Shopping Center, the C-1 Downtown Commercial, the C-2 General Commercial, the BP Business Park, the I-L Light Industrial, or the P Public zone within the City of Cheney.*
- 2. It is unlawful to license or permit a collective garden located in the SR-2 Semi Rural Residential, the CALR Critical Area Limited Residential, the R-1 Single Family Residential, the R-2 Two Family Residential, the R-3 Multi-Family Residential, the R-3H High Density Multi-Family Residential, the Membership Lodging Special Overlay District, the NCS Neighborhood Shopping Center, the*

C-1 Downtown Commercial, the C-2 General Commercial, the BP Business Park, the I-L Light Industrial, or the P Public zone within the City of Cheney.

3. *It is unlawful to create or participate in a collective garden without a valid license issued by the state liquor control board and a valid permit issued by the City of Cheney*
4. *It is unlawful to own or operate a marijuana retail outlet or medical cannabis dispensary located in the SR-2 Semi Rural Residential, the CALR Critical Area Limited Residential, the R-1 Single Family Residential, the R-2 Two Family Residential, the R-3 Multi-Family Residential, the R-3H High Density Multi-Family Residential, the Membership Lodging Special Overlay District, the NCS Neighborhood Shopping Center, the C-1 Downtown Commercial, the BP Business Park, the I-L Light Industrial, or the P Public zone within the City of Cheney.*
5. *It is unlawful to license or permit a marijuana retail outlet or medical cannabis dispensary located in the SR-2 Semi Rural Residential, the CALR Critical Area Limited Residential, the R-1 Single Family Residential, the R-2 Two Family Residential, the R-3 Multi-Family Residential, the R-3H High Density Multi-Family Residential, the Membership Lodging Special Overlay District, the NCS Neighborhood Shopping Center, the C-1 Downtown Commercial, the BP Business Park, the I-L Light Industrial, or the P Public zone within the City of Cheney.*
6. *It is unlawful to own or operate a marijuana processing facility or a medical cannabis processing facility in the SR-2 Semi Rural Residential, the CALR Critical Area Limited Residential, the R-1 Single Family Residential, the R-2 Two Family Residential, the R-3 Multi-Family Residential, the R-3H High Density Multi-Family Residential, the Membership Lodging Special Overlay District, the NCS Neighborhood Shopping Center, the C-1 Downtown Commercial, the C-2 General Commercial, or the P Public zone within the City of Cheney.*
7. *It is unlawful to license or permit a marijuana processing facility or a medical cannabis processing facility in the SR-2 Semi Rural Residential, the CALR Critical Area Limited Residential, the R-1 Single Family Residential, the R-2 Two Family Residential, the R-3 Multi-Family Residential, the R-3H High Density Multi-Family Residential, the Membership Lodging Special Overlay District, the NCS Neighborhood Shopping Center, the C-1 Downtown Commercial, the C-2 General Commercial, or the P Public zone within the City of Cheney.*
8. *It is unlawful to own or operate a marijuana production facility or a medical cannabis production facility in the SR-2 Semi Rural Residential, the CALR*

Critical Area Limited Residential, the R-1 Single Family Residential, the R-2 Two Family Residential, the R-3 Multi-Family Residential, the R-3H High Density Multi-Family Residential, the Membership Lodging Special Overlay District, the NCS Neighborhood Shopping Center, the C-1 Downtown Commercial, the C-2 General Commercial, or the P Public zone within the City of Cheney.

9. *It is unlawful to license or permit a marijuana production facility or a medical cannabis production facility in the SR-2 Semi Rural Residential, the CALR Critical Area Limited Residential, the R-1 Single Family Residential, the R-2 Two Family Residential, the R-3 Multi-Family Residential, the R-3H High Density Multi-Family Residential, the Membership Lodging Special Overlay District, the NCS Neighborhood Shopping Center, the C-1 Downtown Commercial, the C-2 General Commercial, or the P Public zone within the City of Cheney.*
10. *It is unlawful to own or operate a marijuana processing facility, medical cannabis processing facility, marijuana production facility, medical cannabis production facility, marijuana retail outlet, or medical cannabis dispensary without a valid license issued by the state liquor control board and a valid permit issued by the City of Cheney.*
11. *It is unlawful to work at a collective garden, marijuana processing facility, medical cannabis processing facility, marijuana production facility, medical cannabis production facility, marijuana retail outlet, or medical cannabis dispensary unless the garden, facility, outlet, or dispensary holds both a valid license issued by the state liquor control board and a valid permit issued by the City of Cheney.*
12. *It is unlawful to create, participate in, own, or operate a collective garden, marijuana processing facility, medical cannabis processing facility, marijuana production facility, medical cannabis production facility, marijuana retail outlet, or medical cannabis dispensary that is located within one thousand feet (1000') 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.*
13. *Violation of this section shall be a civil infraction punishable under Cheney Municipal Code section 1.27.*
14. *Violation of this section is additionally declared to be a nuisance.*

Section 9. Public Hearing Required. Pursuant to RCW 36.70A.390 and RCW 35A.63.220, within ninety days of the passage of this Ordinance the City Council will hold a public hearing on these interim zoning regulations.

Section 10. Duration. The interim zoning regulations established herein shall be in effect until six-months from the effective date noted below, unless extended by the City Council, pursuant to State law.

Section 11. No Non-conforming Uses. No use that constitutes or purports to be a marijuana producer, marijuana processor, or marijuana retailer as those terms are defined in this ordinance, that was engaged in that activity prior to the enactment of this ordinance shall be deemed to have been a legally established use under the provisions of the Cheney Municipal Code and that use shall not be entitled to claim legal non-conforming status.

Section 12. Work Program. The Planning Official and/or his/her designee is hereby authorized and directed to address issues related to determining the legality of marijuana production facilities, processing facilities, and retailing facilities, including but not limited to review of the pending dispute between state and federal law enforcement authorities regarding the legality of recreational marijuana under any circumstances and notwithstanding the enactment by the legislature of Initiative 502. The work program should also develop appropriate permanent land use regulations pursuant to the new state law and state licensing requirements for review and recommendation for inclusion in the zoning regulations or other provisions of the Cheney Municipal Code. Such regulations shall permit the location of marijuana producers, marijuana processors, and marijuana retailers in the city to the extent, but only to the extent, authorized by state law and then only when in compliance with state licensing requirements and City regulations. Further, appropriate conditional use permit regulations shall be developed to regulate infrastructure needs of marijuana producers and processors. Further, appropriate nuisance declaration and abatement provisions should be developed to address any violations of any new State or City regulations or licensing requirements. Such regulations shall be presenting to the Cheney Planning Commission and Cheney City Council for consideration and action in due course. The Finance Director and/or his/her designee is hereby authorized to develop business licensing or other regulations that may be necessary and appropriate pursuant to the newly amended law for review and recommendation for inclusion in the Cheney Municipal Code.

Section 13. 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.13.190. Without immediate interim zoning regulations on the establishment on such uses, development or use of a property may occur or attempt to become vested that is incompatible with I-502, the rules to be adopted by the Liquor Control Board and the laws adopted by the City of Cheney. Therefore, the interim zoning regulations must be imposed 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 to use or develop a property in a lawful way.

Section 14. Effective Date. This Ordinance shall take effect and be in full force and effect immediately upon passage, as set forth herein.

Section 15. Conflict with other CMC Provisions. If the provisions of this Ordinance are found to be inconsistent with other provisions of the Cheney Municipal Code, this Ordinance shall control.

Section 16. Severability. Should any section, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.

Introduced this ____ day of _____, 2013.

Passed by the City Council this ____ day of _____, 2013.

Approved by the Mayor this ____ day of _____, 2013.

Tom Trulove, Mayor

ATTEST:

Cynthia L. Niemeier, City Clerk

APPROVED AS TO FORM:

Stanley M. Schwartz, City Attorney