

URGENCY ORDINANCE NO. 1136

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CAMARILLO, CALIFORNIA, EXTENDING A TEMPORARY MORATORIUM PERTAINING TO PRIVATE MARIJUANA CULTIVATION AND NON-MEDICAL MARIJUANA FACILITIES

The City Council of the City of Camarillo does ordain as follows:

SECTION 1. Findings.

A. As set forth in Municipal Code sections 19.55.030(A), (C), and (D), the City of Camarillo prohibits all medical marijuana dispensaries, marijuana cultivation facilities, and commercial cannabis activities. Municipal Code section 19.55.030(B) prohibits medical marijuana deliveries in the City unless the delivery is made by a Primary Caregiver to his or her Qualified Patient, as those terms are defined in Health and Safety Code sections 11362.5 and 11362.7.

B. On November 8, 2016, the voters of the State of California approved Proposition 64, entitled the "Control, Regulate and Tax Adult Use of Marijuana Act."

C. Proposition 64 legalizes and regulates recreational marijuana in California. Proposition 64 requires recreational marijuana businesses, including cultivators, manufacturers, distributors, retailers, and testing laboratories, to obtain a state license in order to operate lawfully. The state will not issue licenses if the proposed recreational marijuana business violates a local ordinance. The state anticipates that it will begin issuing licenses for recreational marijuana businesses on or about January 1, 2018.

D. Business and Professions Code section 26200, which is part of Proposition 64, expressly recognizes the ability of cities to completely prohibit all recreational marijuana businesses or to regulate such businesses.

E. Under Proposition 64, individuals may possess and use specified amounts of marijuana and may cultivate up to six marijuana plants per private residence. Under Health and Safety Code section 11362.2(b), cities may prohibit private outdoor marijuana cultivation, but may not prohibit completely private indoor cultivation of six marijuana plants or less. Cities, however, may reasonably regulate private indoor cultivation of six marijuana plants or less.

F. It is imperative that the City maintain local control over all marijuana land uses to the fullest extent allowed by law. The City anticipates that Proposition 64 may encourage the establishment of various marijuana businesses within the City. The Municipal Code does not currently address recreational marijuana businesses. While no such business can operate in the City lawfully without a state license, express Municipal Code regulations regarding recreational marijuana dispensaries, cultivation facilities, manufacturing sites, transporters, distributors, testing laboratories, and microbusinesses are necessary to provide clear guidelines regarding the scope of prohibited conduct and minimize the potential for confusion regarding the City's policies.

G. Express Municipal Code regulations are also necessary to provide clear guidance regarding the scope of permissible private cultivation. The City anticipates that many individuals will begin to cultivate marijuana at their private residences following the

passage of Proposition 64.

H. The adoption of a comprehensive marijuana ordinance that addresses both private cultivation and commercial recreational marijuana businesses will take time and careful consideration and will require input from various community stakeholders and the general public. Until that process is complete, an interim urgency ordinance under Government Code section 65858(a) is necessary to protect the public health, safety, and welfare.

I. Marijuana establishments and activities often present health, welfare, and public safety issues for cities. Several California cities and counties have experienced serious adverse impacts associated with and resulting from marijuana dispensaries, delivery services, and cultivation sites. According to these communities and according to news stories widely reported, marijuana land uses have resulted in and/or caused an increase in crime, including burglaries, robberies, violence, and illegal sales and use of marijuana in the areas immediately surrounding such marijuana activities. There have also been large numbers of complaints of odors related to marijuana cultivation and storage. Marijuana cultivation sites are often associated with illegal construction, unsafe electrical wiring, excessive water use, and fire hazards.

J. A California Police Chiefs Association compilation of police reports, news stories, and statistical research regarding crimes involving medical marijuana businesses and their secondary impacts on the community is contained in a 2009 white paper report which was Attachment 3 to the Agenda Report presented to the City Council on November 16, 2016 when the City Council voted to adopt an urgency ordinance establishing a 45 day temporary moratorium pertaining to private marijuana cultivation and non-medical marijuana facilities with this ordinance and on file with the City Clerk. The report details numerous violent crimes that occurred throughout the state in and around medical marijuana establishments.

K. The Santa Clara County District Attorney's Office issued a May 2014 memorandum entitled "Issues Surrounding Marijuana in Santa Clara County," which outlined many of the negative secondary effects resulting from marijuana cultivation; a copy of this memorandum was 4 to the Agenda Report presented to the City Council on November 16, 2016. According the memorandum, marijuana cultivation sites were often associated with illegal construction, haphazard electrical wiring, electricity theft, fires, mold and fungus problems, diversion of public water, pollution of waterways, firearm violations, crimes, and organized crime and street gang involvement.

L. Manufacturing of cannabis products can involve the use of chemicals and solvents and, as a result, carries a significant risk of explosion due to the distillation process utilized to extract tetrahydrocannabinol. Major burn treatment centers at two hospitals in Northern California reported in 2015 that nearly 10 percent of severe burn cases were attributed to butane hash oil explosions, which was more than burn cases from car accidents and house fires combined.

M. News stories regarding adverse impacts of marijuana businesses, including dispensaries, cultivation sites, and delivery services, were Attachment 5 to the Agenda Report presented to the City Council on November 16, 2016. As detailed in these stories, marijuana establishments and cultivation sites are frequent targets of violent crimes, including robberies and assaults, in part because banking institutions will not accept credit card payments for

illegal drugs under federal law, forcing such businesses to be cash-only. There is also significant evidence that marijuana delivery services are targets of violent crime and pose a danger to the public.

N. Marijuana processing has led to explosions across the country because the processing of marijuana-related products, such as cannabis oils, often involves the use of butane gas flames.

O. In 2015, there reportedly were at least five-marijuana-related wildfires linked to marijuana growing operations.

P. In 2016, a New York firefighter died in an explosion at a residential marijuana cultivation site.

Q. It is reasonable to conclude that marijuana businesses and private cultivation under Proposition 64 would cause similar adverse impacts on the public health, safety, and welfare in Camarillo.

R. In order to protect the public health, safety, and welfare, the City Council desires to amend the Camarillo Municipal Code to address, in express terms, recreational marijuana businesses, marijuana deliveries, and private marijuana cultivation. The City Council hereby determines that the Municipal Code is in need of further review and possible revision to protect the public against potential negative health, safety, and welfare impacts and to address private marijuana cultivation and the new marijuana business models recognized under Proposition 64.

S. Government Code Section 65858 authorizes the adoption of an urgency ordinance for a period of 45 days to protect the public health, safety, and welfare, and to prohibit land uses that may conflict with land use regulations that a city's legislative bodies are considering, studying, or intending to study within a reasonable time.

T. On November 16, 2016, the City Council adopted Urgency Ordinance No. 1133 establishing a 45 day moratorium pertaining to private marijuana cultivation and non-medical facilities.

U. Since November 16, 2016, City staff has undertaken an initial investigation of these matters including consideration of what provisions should be included in a permanent ordinance regarding non-medical marijuana with regard to marijuana businesses (including cultivation, manufacturing, distribution, testing, and retail sales), outdoor cultivation, indoor cultivation and delivery of non-medical marijuana to residents of the City of Camarillo. The State of California is currently reviewing Proposition 64 for the purpose of drafting regulations relating to non-medical marijuana and those regulations are expected to take several months to be drafted and approved by the State and these regulations will be reviewed by City Staff in connection with drafting proposed provisions for a permanent ordinance to address the issues involved with non-medical marijuana.

V. City staff needs additional time to review the potential provisions for a permanent non-medical marijuana ordinance and review the proposed State regulations which are expected to be issued in 2017 and to recommend a course of action to the City Council, while avoiding the potential adverse impacts of non-medical marijuana facilities and private marijuana cultivation that may arise as the City develops permanent regulations.

W. Government Code Section 65858 provides that after a notice pursuant to Government Code Section 65090 and public hearing, the City Council may extend the interim urgency ordinance for 10 months and 15 days. The City has complied with the notice and public hearing requirements of Government Code Sections 65858(a) and 65090. Government Code Section 65858 (d) requires that prior to adoption of the ordinance extending the moratorium, a report is required to be submitted to the City Council describing the measures taken to alleviate the condition which led to the adoption of the ordinance and that report is the Agenda Report which was submitted to the City Council for its meeting on December 14, 2016 to consider adopting this ordinance to extend the moratorium.

X. Failure to adopt this ordinance extending the moratorium would impair the orderly and effective implementation of contemplated amendments to the Municipal Code.

Y. The City Council further finds that the extension of this moratorium is a matter of local and City-wide importance and is not directed towards any particular person or entity that seeks to cultivate marijuana in Camarillo.

SECTION 2. Environmental Findings. The City Council exercises its independent judgment and finds that this ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, sections: 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment); 15060(c)(3) (the activity is not a project as defined in Section 15378); and 15061(b)(3), because the activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. The proposed ordinance maintains the status quo and prevents changes in the environment pending the completion of the contemplated municipal code review. Because there is no possibility that this ordinance may have a significant adverse effect on the environment, the adoption of this ordinance is exempt from CEQA.

SECTION 3. Imposition of Moratorium. In accordance with Government Code section 65858(a), and pursuant to the findings stated herein, the City Council hereby: (1) finds that there exists a current and immediate threat to the public health, safety, and welfare requiring this interim Urgency Ordinance; (2) finds that this Ordinance is necessary for the immediate preservation of the public peace, health, and safety as set forth herein; and (3) declares and imposes a temporary moratorium for the immediate preservation of the public health, safety and welfare as set forth below:

A. In accordance with the authority granted the City of Camarillo under Government Code section 65858(a), and pursuant to the findings stated herein, for a period of 10 months and 15 days from the effective date of this ordinance:

1. Non-medical marijuana facilities are prohibited in all zoning districts in the City and shall not be established or operated anywhere in the City.
2. No person or entity may cultivate marijuana at any location in the City, except that a person may cultivate no more than six living marijuana plants inside his or her private residence, or inside an accessory structure to his or her private residence located upon the grounds of that private residence that is fully enclosed and secured against unauthorized entry, provided that the owner of the property provides written consent expressly allowing the marijuana cultivation to occur,

the person conducting the marijuana cultivation complies with all applicable Building Code requirements set forth in Title 16 of this code, there is no use of gas products (CO2, butane, propane, natural gas, etc.) on the property for purposes of marijuana cultivation, and the marijuana cultivation complies with Health and Safety Code section 11362.2(a)(3) including, but not limited to, the provision that no more than six living marijuana plants may be cultivated within a single private residence, or upon the grounds of that private residence, at one time.

3. A non-medical marijuana facility may not deliver marijuana from any fixed or mobile location, either inside or outside the city, to any person in the City.

B. For purposes of this ordinance, the following definitions apply:

"Cultivate" means to plant, grow, harvest, dry, cure, grade, and/or trim marijuana.

"Cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of marijuana.

"Marijuana" shall have the meaning set forth in Health and Safety Code section 11018.

"Non-medical marijuana facility" means any building, property, business, establishment, or location where any person or entity establishes, commences, engages in, conducts, or carries on, or permits another person or entity to establish, commence, engage in, conduct, or carry on, any activity that requires a state license or nonprofit license under Business and Professions Code sections 26000 and following, including but not limited to marijuana cultivation, marijuana distribution, marijuana transportation, marijuana storage, manufacturing of marijuana products, marijuana processing, the sale of any marijuana or marijuana products, and the operation of a marijuana microbusiness.

C. City staff is directed to study appropriate modifications to the City's ordinances regarding non-medical marijuana facilities and marijuana cultivation.

D. Pending the completion of such studies and the adoption of an ordinance to establish appropriate operational and zoning regulations, it is necessary for the immediate preservation of the public health, safety and welfare that this ordinance takes effect immediately. In the absence of immediate effectiveness, such uses in the City may conflict with existing regulations or requirements.

E. This ordinance will take effect immediately upon adoption by a four-fifths vote of the City Council.

F. A violation of this ordinance is a public nuisance per se and is subject to enforcement under any applicable law, including but not limited to the provisions set forth in Municipal Code Chapter 1.12. Any violation of this ordinance is a misdemeanor. In any such criminal prosecution, the city attorney is authorized to reduce the misdemeanor charge to an infraction.

SECTION 4. Severability. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision will not affect the validity of the remaining

portions of this ordinance. The City Council declares that it would have passed this ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

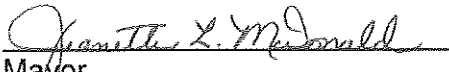
SECTION 5. Effective Date and Duration. This urgency ordinance enacted under California Government Code section 65858(a) will take effect on December 31, 2016 upon adoption by a four fifths (4/5) vote of the City Council. This ordinance will remain in effect for 10 months and 15 days from the effective date, and will expire on November 16, 2017, unless extended.

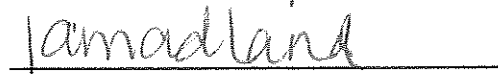
SECTION 6. Study. City Staff is directed to continue to study and analyze issues related to the establishment or operation of recreational marijuana businesses and private marijuana cultivation within the City, including but not limited to, reviewing State regulations which are expected to be drafting and adopted in 2017, evaluating conflicts in state and federal law concerning the validity of the legislation, the potential impacts of such facilities or activities on public health, safety and welfare of the community, the desirability of such facilities or activities in various zones, and the extent of regulatory controls, if any, to impose on such facilities or activities.

SECTION 7. Report. Staff is directed to provide a written report to the City Council at least ten days prior to the expiration of this ordinance, describing the study conducted of the conditions that led to the adoption of this ordinance, in accordance with state law.

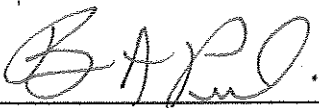
SECTION 8. Publication. The City Clerk is directed to certify this ordinance and cause it to be published in the manner required by law.

PASSED, APPROVED, AND ADOPTED December 14, 2016.


Mayor

Attested to on 12/15/16

City Clerk

APPROVED AS TO FORM


City Attorney

I, Jeffrie Madland, City Clerk of the City of Camarillo, certify Urgency Ordinance No. 1136 was adopted by the City Council at a regular meeting held December 14, 2016, by the following vote:

AYES: Councilmembers: Craven, Kildee, Morgan, Trembley, Mayor McDonald
NOES: Councilmembers: None
ABSENT: Councilmembers: None

Jeffrie Madland
City Clerk

