

INTERIM URGENCY ORDINANCE NO. 667

AN INTERIM URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CUDAHY EXTENDING THE TEMPORARY MORATORIUM ON NONMEDICAL “COMMERCIAL MARIJUANA ACTIVITIES,” ESTABLISHED UNDER INTERIM URGENCY ORDINANCE NO. 666, FOR A PERIOD OF 22 MONTHS AND 15 DAYS, IN ACCORDANCE WITH THE ADULT USE OF MARIJUANA ACT (PROPOSITION 64) AND GOVERNMENT CODE SECTION 65858

WHEREAS, Federal Controlled Substances Act (21 U.S. C., § 801 et seq.) classifies marijuana as a Schedule 1 Drug (other Schedule 1 examples include heroin and LSD), which makes it unlawful under federal law for any person to cultivate, manufacture, distribute or dispense, or possess with intent to manufacture, distribute, or dispense marijuana; and

WHEREAS, in 1996, the California Legislature approved Proposition 215, also known as the Compassionate Use Act (the “CUA”), which was codified under Health and Safety Code Section 11262.5 et sec. and was intended to enable persons who are in need of medical marijuana for specified medical purposes, such as cancer, anorexia, AIDS, chronic pain, glaucoma and arthritis, to obtain and use marijuana under limited circumstances and where recommended by a physician; and

WHEREAS, the CUA provides that “nothing in this section shall be construed or supersede legislation prohibiting persons from engaging in conduct that endangers others, or to condone the diversion of marijuana for non-medical purposes”; and

WHEREAS, in 2004, the California Legislature enacted the Medical Marijuana Program Act (Health & Saf. Code, § 11362.7 et seq.)(the “MMP”), which clarified the scope of the CUA, created a state-approved voluntary medical marijuana identification card program, and authorized cities to adopt and enforce rules and regulations consistent with the MMP; and

WHEREAS, Assembly Bill 2650 (2010) and Assembly Bill 1300 (2011) amended the MMP to expressly recognize the authority of counties and cities to “[a]dopt local ordinances that regulate the location, operation, or establishment of a medical marijuana cooperative or collective” and to civilly and criminally enforce such ordinances; and

WHEREAS, California courts have found that neither the CUA nor the MMP provide medical marijuana patients with an unfettered right to obtain, cultivate, or dispense marijuana for medical purposes; and

WHEREAS, in 2013, the California Supreme Court in the case of *City of Riverside v. Inland Empire Patients Health and Wellness Center* (2013) 56 Cal.4th 729, found the CUA and MMP do not preempt a city's local regulatory authority and confirmed a city's ability to prohibit medical marijuana dispensaries within its boundaries; and

WHEREAS, in 2013, the California Third District Appellate Court held that state law does "not preempt a city's police power to prohibit the cultivation of all marijuana within the city"; and

WHEREAS, the Federal Controlled Substances Act (21 U.S. C., § 801 et seq.) makes it unlawful under federal law for any person to cultivate, manufacture, distribute or dispense, or possess with intent to manufacture, distribute, or dispense marijuana; and

WHEREAS, despite the above-referenced federal law, on August 29, 2013, the United States Department of Justice issued a letter stating that, notwithstanding the federal classification of marijuana as a schedule 1 controlled substance, one can reasonably expect the federal government to stand down and defer to state and local marijuana regulations that are strict and robust; and

WHEREAS, in September 2015, the California State Legislature enacted, and Governor Brown signed into law three bills – Assembly Bill 243, Assembly Bill 266, and Senate Bill 643 – which together comprise the Medical Marijuana Regulation and Safety Act (the "MMRSA"); and

WHEREAS, the MMRSA creates a comprehensive dual state licensing system for the cultivation, manufacture, retail, sale, transport, distribution, delivery, and testing of medical cannabis; and

WHEREAS, the MMRSA contains new statutory provisions that:

- Allow local government to enact ordinances expressing of their intent to prohibit the cultivation of marijuana and not administer a conditional use permit program pursuant to Health and Safety Code Section 11362.777 for the cultivation of marijuana (Health & Saf. Code, § 11362.777(c)(4));
- Expressly provide that the Act does not supersede or limit local authority for local law enforcement activity, enforcement of local ordinances, or enforcement of local permit or licensing requirements regarding marijuana (Bus. & Prof. Code, § 19315(a));
- Expressly provide that the Act does not limit the authority or remedies of a local government under any provision of law regarding marijuana, including, but not limited to, a local government's right to make and enforce within its limits all police regulations not in conflict with its general laws (Bus. & Prof. Code, § 19316(c));

- Require a local government that wishes to prevent marijuana delivery activity (as defined in Business and Professions Code Section 19300.5(m)) from operating within the local government's boundaries to enact an ordinance affirmatively banning such delivery activity (Bus. & Prof. Code, § 19340(a)); and

WHEREAS, on August 22, 2016, in response to the MMRSA, the City Council of the City of Cudahy (the "City Council" of the "City") adopted a temporary moratorium, or ban, on "commercial cannabis activities," which are defined as the use or occupancy of any structure or property where the cultivation, possession, manufacturing, processing, storing, laboratory testing, labeling, transporting, distribution, delivery, or sale of medical cannabis or a medical cannabis product occurs; and

WHEREAS, on September 26, 2016, the City Council extended such moratorium on commercial cannabis activities through August 21, 2018; and

WHEREAS, the MMRSA was renamed the Medical Cannabis Regulation and Safety Act (the "MCRSA") under Senate Bill 837 in June 2016, which also made includes substantive changes to the applicable state laws, which affect the various state agencies involved in regulating cannabis businesses as well as potential licensees; and

WHEREAS, on November 8, 2016, the Control, Regulate, and Tax Adult Use of Marijuana Act ("AUMA") was approved by California voters as Proposition 64; and

WHEREAS, Proposition 64 legalizes the nonmedical use of cannabis by persons 21 years of age and over, and the personal cultivation of up to six marijuana plants; and

WHEREAS, Proposition 64 additionally creates a state regulatory and licensing system governing the commercial cultivation, testing, and distribution of nonmedical marijuana, and the manufacturing of nonmedical marijuana products;

WHEREAS, Proposition 64 became effective on November 9, 2016, pursuant to the California Constitution (Cal. Const., art. II, § 10(a)); and

WHEREAS, pursuant to Proposition 64, local governments, including cities, can reasonably regulate, but cannot ban, personal indoor cultivation of up to six (6) living marijuana plants within the person's private residence, including indoor cultivation in a greenhouse on the same property as the residence that is not physically part of the home (Health & Saf. Code, §§ 11362.1(a), 11362.1(a)-(b)); and

WHEREAS, Proposition 64 enables local governments, including cities, to regulate and/or ban, the personal cultivation of up to six (6) living marijuana plants outdoors upon the grounds of a private residence (Health & Saf. Code, § 11362.2(b)(3)); and

WHEREAS, on November 14, 2016, the City Council adopted a code amendment to prohibit outdoor personal marijuana cultivation and establish regulations and a permitting process for indoor personal marijuana cultivation; and

WHEREAS, the Attorney General's August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use recognizes that the cultivation or other concentration of marijuana in any location or premises without adequate security increases the risk that nearby homes or businesses may be negatively impacted by nuisance activity such as loitering or crime; and

WHEREAS, marijuana plants, as they begin to flower, and for a period of two (2) months or more thereafter, produce a strong odor detectable beyond property boundaries if grown outdoors; and

WHEREAS, the strong smell of marijuana alert persons to the location of the valuable plants, and create a risk of burglary, robbery or armed robbery; and

WHEREAS, several California cities have reported negative impacts of commercial marijuana activities including, but not limited to, offensive odors, illegal sales and distribution of marijuana, trespassing, theft, violent robberies and robbery attempts, fire hazards, and problems associated with mold, fungus, and pests; and

WHEREAS, based on the experiences of other cities, these negative effects on the public health, safety, and welfare are likely to occur in the City if commercial marijuana activities are permitted without the City first studying potential regulatory strategies; and

WHEREAS, the limited immunity from specified state marijuana laws provided by the CUA, MMP, MMRSA, and Proposition 64 do not confer a land use right or the right to create or maintain a public nuisance; and

WHEREAS, according to Proposition 64, the state licensing authorities are responsible for creating regulations concerning commercial marijuana activities; and

WHEREAS, such state-formulated regulations are not expected until 2018 and

WHEREAS, California Government Code Section 65858 authorizes the City Council to adopt an interim urgency ordinance for the immediate preservation of the public health, safety, or welfare, and to prohibit a land use that is in conflict with a contemplated general plan, specific plan, or zoning proposal that the City Council, Planning Commission, or Economic Development Department is considering or studying or intends to study within a reasonable time; and

WHEREAS, the City Council wishes to allow staff time to assess the impacts and opportunities related to sensitive commercial marijuana activities before such uses are contemplated for local prohibition and/or regulation; and

WHEREAS, under Proposition 64, a "commercial marijuana activity" includes the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, labeling, transportation, distribution, delivery or sale of nonmedical marijuana and nonmedical marijuana products as provided for in Proposition 64; and

WHEREAS, Government Code sections 36934 and 36937 authorize the City Council to adopt an urgency ordinance for the immediate preservation of the public peace, health, or safety; and

WHEREAS, the moratorium on commercial marijuana activities established under this Interim Urgency Ordinance pertaining to nonmedical marijuana shall complement the existing temporary moratorium on commercial cannabis activities pertaining to medical marijuana; and

WHEREAS, pursuant to Government Code Section 65858, the City Council adopted Interim Urgency Ordinance No. 666 on January 23, 2017 to temporarily prohibit commercial cannabis activities for a period of forty-five (45) days; and

WHEREAS, the moratorium approved under Interim Urgency Ordinance No. 666 shall expire on March 9, 2017 unless extended by City Council Ordinance, in accordance with Government Code Section 65858; and

WHEREAS, the City Council wishes to extend the existing temporary moratorium established under Interim Urgency Ordinance No. 2889 for a period of twenty-two (22) months and fifteen (15) days, pursuant to Government Code Section 65858, as the conditions leading to the implementation of such moratorium persist; and

WHEREAS, the written report required under Government Code Section 65858(d) has been fulfilled by the staff report accompanying this Interim Urgency Ordinance in the City Council agenda packet for this item dated February 27, 2017; and

WHEREAS, the City Council public hearing for consideration of this item was noticed in accordance with the requirements set forth in Government Code Section 65090.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CUDAHY, CALIFORNIA DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Recitals. The recitals above are true and correct and incorporated herein by reference.

SECTION 2. Definitions. For purposes of this Interim Urgency Ordinance, the following terms shall be defined as set forth herein in this Section 2:

“Caregiver” or “primary caregiver” shall have the same meaning as set forth in California Business and Professions Code Section 11362.7, as may be amended from time to time.

“Commercial marijuana activity” includes the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, labeling, transportation, distribution, delivery or sale of nonmedical marijuana and nonmedical marijuana products as provided for in Proposition 64.

“Qualifying patient” or “qualified patient” shall have the same meaning as set forth in California Business and Professions Code Section 11362.7, as may be amended from time to time.

SECTION 3. Moratorium.

- A. For the duration of the moratorium established by this Interim Urgency Ordinance or any extension thereof:
1. Commercial marijuana activities, as defined in Section 2, above, are unlawful uses in all zones within the City;
 2. No such commercial marijuana activities shall be established or continued, if previously established, in any zone within the City; and
 3. No use permit, variance, building permit, or any other entitlement or permit, whether administrative or discretionary, shall be approved or issued by the City for the establishment or operation of commercial marijuana activities and no person shall otherwise establish such businesses or operations in any zone within the City.
- B. The temporary prohibitions set forth in Section 3(A), above, shall apply to qualified patients and primary caregivers, as defined in Section 2, above.

SECTION 4. Findings. This Interim Urgency Ordinance is needed for the immediate preservation of the public health, safety, and welfare based upon the following:

- A. Based on the information set forth in the recitals, above, all of which are deemed true and correct, this Interim Urgency Ordinance is urgently needed for the immediate preservation of the public health, safety, and welfare.
- B. The proposed moratorium will provide the City time to study regulatory strategies regarding commercial marijuana activities and the potential impacts such related land uses may have on the public health, safety, and welfare.
- C. Without the imposition of a temporary moratorium on the establishment of commercial marijuana activities, as described herein, opportunistic entrepreneurs are likely to seek to establish such commercial marijuana activities before the City thoroughly and diligently formulates regulatory standards or prohibitions pertaining to such activities.

SECTION 5. CEQA. This Interim Urgency Ordinance is not subject to CEQA under the general rule set forth in Section 15061(b)(3) of the CEQA Guidelines that CEQA only applies to projects which have the potential for causing a significant effect on the environment.

SECTION 6. Inconsistent Provisions. Any provision of the Cudahy Municipal Code or appendices thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to the extent necessary to implement the provisions of this Interim Urgency Ordinance.

SECTION 7. Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Interim Urgency Ordinance, or any part thereof is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Interim Urgency Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsection, subdivision, paragraph, sentence, clause or phrase would be subsequently declared invalid or unconstitutional.

SECTION 8. Construction. The City Council intends this Ordinance to supplement, not to duplicate or contradict, applicable state and federal law and this Ordinance shall be construed in light of that intent. To the extent the provisions of the Cudahy Municipal Code as amended by this Ordinance are substantially the same as the provisions of that Code as it read prior to the adoption of this Ordinance, those amended provisions shall be construed as continuations of the earlier provisions and not as new enactments.

SECTION 9. Effective Date. This Interim Urgency Ordinance shall become effective immediately upon adoption if adopted by at least four-fifths (4/5) vote of the City Council and shall have the effect of extending the moratorium originally enacted under Interim Urgency Ordinance No. 666 for an additional period of twenty-two (22) months and fifteen (15) days through January 24, 2019, pursuant to Government Code Section 65858.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Cudahy at the regular meeting of this 27th day of February, 2017.

Baru Sanchez
Mayor

ATTEST:

Richard Iglesias
Deputy City Clerk

CERTIFICATION

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) SS:
CITY OF CUDAHY)

I, Richard Iglesias, Deputy City Clerk of the City of Cudahy, hereby certify that the foregoing Interim Urgency Ordinance No. 667 was passed and adopted by the City Council of the City of Cudahy, signed by the Mayor and attested by the Deputy City Clerk at a regular meeting of said Council held on the 27th day of February, 2017 and that said Interim Urgency Ordinance was adopted by the following vote, to-wit:

AYES: Garcia, Markovich, Hernandez, Sanchez

NOES: None

ABSTAIN: None

ABSENT: Guerrero

Richard Iglesias
Deputy City Clerk