

DATE SUBMITTED 01/19/16
 SUBMITTED BY City Manager
 DATE ACTION REQUIRED 01/20/16

COUNCIL ACTION (x)
 PUBLIC HEARING REQUIRED ()
 RESOLUTION ()
 ORDINANCE 1ST READING (x)
 ORDINANCE 2ND READING ()
 CITY CLERK'S INITIALS ()

**IMPERIAL CITY COUNCIL
 AGENDA ITEM**

SUBJECT: Urgency Ordinance – Temporary moratorium on commercial and industrial cultivation, processing and distribution of medical marijuana

DEPARTMENT INVOLVED: **City Manager, City Attorney, City Clerk**

BACKGROUND/SUMMARY: As outlined in the attached urgency ordinance, the State Legislature adopted a series of bills collectively called the Medical Marijuana Regulation and Safety Act that was signed into law on October 9, 2015. The Act went into effect on January 1, 2016 and set up a state licensing process for commercial medical marijuana uses while protecting local control by requiring that all such businesses must have a local license or permit to operate in addition to a state license. Cities are allowed to completely prohibit commercial medical marijuana activities. Cities are required to take local action on this issue by March 1, 2016 or state law will become the sole authority. In that there are multiple issues and on-going discussion in Sacramento about this topic staff recommends that the Council adopt the attached urgency ordinance that prohibits commercial medical marijuana activities temporarily until further studies have been completed and a possible update to the Zoning Code can be accomplished. The proposed moratorium is for a forty five (45) day period.

FISCAL IMPACT: NONE

F.O. INITIALS _____

STAFF RECOMMENDATION: Adopt the proposed urgency ordinance.

MANAGER'S RECOMMENDATION:

MANAGER'S INITIALS _____

The City Manger recommends that City Council adopt the proposed urgency ordinance for a temporary moratorium on commercial medical marijuana activities.

MOTION:

SECONDED: APPROVED () REJECTED ()
 AYES: DISAPPROVED () DEFERRED ()
 NAYES:
 ABSENT: REFERRED TO:

ORDINANCE NO.788

AN INTERIM URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF IMPERIAL, CALIFORNIA, IMPOSING A TEMPORARY MORATORIUM ON THE COMMERCIAL AND INDUSTRIAL CULTIVATION, PROCESSING AND DISTRIBUTION OF MEDICAL MARIJUANA IN THE CITY PENDING THE COMPLETION OF STUDIES AND THE PREPARATION OF AN UPDATE TO THE CITY'S ZONING CODE.

The City Council of the City of Imperial does hereby ordain as follows:

SECTION 1: Article XIII of Chapter 15 of the Imperial Municipal code is hereby enacted to read as follows:

Article XIII
Moratorium Relating to Medical Marijuana

Section 15-90	Purpose
Section 15-91	Findings
Section 15-92	Urgent Need
Section 15-93	Definitions
Section 15-94	Prohibited Use
Section 15-95	Council Direction
Section 15-96	Authority
Section 15-97	CEQA
Section 15-98	Severability
Section 15-99	Notice

15-90 Purpose

WHEREAS, in 1996, the voters of the State of California approved Proposition 215 (codified as Health & Safety Code Section 11362.5 et seq. and entitled "The Compassionate Use Act of 1996"); and

WHEREAS, the intent of Proposition 215 was to enable seriously ill Californians to legally possess, use, and cultivate marijuana for medical use under state law; and

WHEREAS, in 2003, the California Legislature adopted SB 420, the Medical Marijuana Program, codified as Health and Safety Code Section 11362.7 et seq., which

permits qualified patients and their primary caregivers to associate collectively or cooperatively to cultivate marijuana for medical purposes without being subject to criminal prosecution under the Penal Code; and

WHEREAS, neither the Compassionate Use Act nor the Medical Marijuana Program require of impose an affirmative duty or mandate upon local governments to allow, authorize, or sanction the establishment of facilities that cultivate or process medical marijuana within its jurisdiction; and

WHEREAS, in May 2013, the California Supreme Court issued its decision in *City of Riverside v. Inland Empire Patients Health and wellness center, Inc.*, holding that cities have the authority to ban medical marijuana land uses; and

WHEREAS, under the Federal Controlled Substances Act, codified in 21 U.S.C. Section 801 et seq., the use, possession, and cultivation of marijuana are unlawful and subject to federal prosecution without regard to a claimed medical need; and

WHEREAS, on October 9, 2015, Governor Jerry Brown signed the “Medical Marijuana Regulation and Safety Act” (“Act”) into law; and

WHEREAS, the Act becomes effective January 1, 2016 and contains provisions which allow for local governments to regulate licenses and certain activities thereunder; and

WHEREAS, the Act contains a provision which sets forth that the State shall become the sole authority for regulation under certain parts of the Act, unless local governments have “land use regulations or ordinances regulating or prohibiting the cultivation of Marijuana...”(Health & Safety Code §11362.777(c)(4).

WHEREAS, several California cities have reported negative impacts of Marijuana cultivation, processing and distribution uses, including 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, marijuana plants, as they begin to flower and for a period of two months or more, produce a strong odor, offensive to many people, and detectable far beyond property boundaries if grown outdoors; and

WHEERAS, in the case of multiple qualified patients who are in control of the same legal parcel, or parcels, of property, or in the case of collective or cooperative cultivation, or in the case of a caregiver growing for numerous patients, a very large number of plants could be cultivated on the same legal parcel, or parcels, within the City of Imperial (“City”); and

WHEREAS, the strong smell of marijuana creates an attractive nuisance, alerting persons to the location of the valuable plants, and creating a risk of burglary, robbery or armed robbery; and

WHEREAS, the indoor cultivation of marijuana had potential adverse effects to the structural integrity of the building, and the use of high wattage grow lights and excessive use of electricity increases the risk of fire which presents a clear and present danger to the building and its occupants; 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, based on the experiences of other cities, these negative effects on the public health, safety, and welfare are likely to occur, and continue to occur, in the City due to the establishment and operation of marijuana cultivation, processing and distribution uses; and

WHEREAS, the City's Municipal Code ("Code") does not address the commercial and industrial cultivation, processing and distribution of medical marijuana; and

WHEREAS, the Code's silence regarding medical marijuana may lead to the inability of the City to regulate cooperatives, collectives, dispensaries and other medical marijuana-related businesses in a manner that will protect the general public and businesses adjacent and near such uses, and

WHEREAS, based on the findings above, the potential establishment of the commercial and industrial cultivation, processing and distribution of medical marijuana uses in the City without regulation poses a current and immediate threat to the public health, safety, and welfare in the City due to the negative land use and other impacts of such uses as described above; and

WHEREAS, the issuance or approval of business licenses, subdivisions, use permits, variances, building permits, or any other applicable entitlement for marijuana cultivation, processing and/or distribution will result in the aforementioned threat to public health, safety, or welfare; and

WHEREAS, it is in the interest of the City, its residents, and its lawfully permitted businesses that City staff undertake a study to consider zoning, zoning ordinance amendments and/or other measures to regulate the establishment and operation of marijuana cultivation, processing and distributing uses in the City; and

WHEREAS, Government Code Section 65858 expressly authorizes the City Council to adopt an urgency ordinance prohibiting any uses which may be in conflict with a contemplated general plan, specific plan, or zoning proposal which the legislative body of the City or the planning commission or the planning department is considering or studying or intends to study within a reasonable time, for the purpose of the immediate preservation of the public health, safety, or welfare.

15-91 Findings

a) The City Council of the City of Imperial finds that the above recitals are true and correct and are incorporated herein by reference as if set forth in full.

b) On October 9, 2015, Governor Jerry Brown signed the “Medical Marijuana Regulation and Safety Act” (“Act”) into law.

c) The Act becomes effective January 1, 2016 and contains provisions which allow for local governments to regulate licenses and certain activities thereunder.

d) The Act contains a provision which sets forth that the state shall become the sole authority for regulation under certain parts of the Act, unless local governments have “land use regulations or ordinances regulating or prohibiting the cultivation of Marijuana...” (Health & Safety Code § 11362.777(c)(4).

e) To allow time for the City to consider, study and enact regulations for medical marijuana cultivation, processing, and distribution uses, it is necessary to temporarily suspend the approval of any and all use permit, variance, building permit, or any other entitlement or permit authorizing the establishment of marijuana cultivation uses, marijuana processing uses, and marijuana dispensaries as defined herein, as such uses may be in conflict with the development standards and implementation regulations that the City will ultimately impose after the City has considered and studied this issue, which shall be accomplished within a reasonable time.

f) A moratorium will provide the City with time to study marijuana cultivation uses, marijuana processing uses, and marijuana dispensaries and the potential impacts such as land uses may have on the public health, safety and welfare.

g) Without the imposition of a temporary moratorium on the establishment of marijuana cultivation, processing, and dispensary uses as described herein, the City anticipates that one (1) or more commercial cannabis cultivation centers may locate in the City before a non-urgency ordinance would become effective.

h) There is a current and immediate threat to the public health, safety and welfare of the City and its community, thereby necessitating the immediate enactment of this moratorium as an urgency ordinance in order to ensure that permits for such facilities are established only under adequate regulations. Imposition of a moratorium will allow the City sufficient time to conclude the preparation of a comprehensive ordinance for the regulation of such activities.

15-92 Urgent Need

Based on the foregoing recitals and findings which are all deemed true and correct, this interim ordinance is urgently needed for the immediate preservation of the public health, safety, and welfare. This interim ordinance shall take effect immediately

upon adoption and shall be of no further force and effect forty-five (45) days following the date of its adoption unless extended in accordance with the provisions set forth in Government Code Section 65858.

15-93 Definitions

In addition to any other enforcement permitted by this Chapter 18.66, the City Attorney may bring a civil action for injunctive relief and civil penalties pursuant to Chapter 1.20 of this code against any person or entity that violates this Chapter. In any civil action brought pursuant to this Chapter, a court of competent jurisdiction may award reasonable attorney's fees and costs to prevailing party.

For purposes of this ordinance, the following definitions shall apply:

a) "Marijuana" means any or all parts of the plant *Cannabis sativa* L., whether growing or not; the seeds of that plant; the resin extracted from any part of the plant; and every compound, manufactured, salt, derivative, mixture, or preparation of the plant, its seeds or resin, including marijuana infused in foodstuff.

b) "Marijuana Cultivation" means growing, planting, harvesting, or processing of marijuana.

c) "Marijuana Processing" means any method used to prepare marijuana or its byproducts for commercial retail and/or wholesale, including but not limited to: drying, cleaning, curing, packaging, and extraction of active ingredients to create marijuana related products and concentrates.

d) "Marijuana Dispensary" means any business, office, store, facility, location, retail "storefront" or wholesale component of any establishment, cooperative or collective that dispenses, distributes, exchanges, transmits, transports, sells or provides marijuana to any person for any reason, including members of any medical marijuana cooperative or collective consistent with the August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use, as may be amended from time to time, that was issued by the office of the Attorney General for the State of California, or for the purposes set forth in California Health and Safety Code Section 11362.5 (Compassionate Use Act of 1996) or California Health and Safety Code Sections 11362.7 to 11362.83 (Medical Marijuana Program Act).

e) "Medical marijuana collective" or "cooperative or collective" means any group that is collectively or cooperatively cultivating and distributing marijuana for medical purposes that is organized in the manner set forth in the August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use, as may be amended from time to time, that was issued by the office of the Attorney General for the state of California of subject to the provisions of California Health and Safety Code Section 11362.5 (Compassionate Use Act of 1996) or California Health and Safety Code Sections 11362.7 to 11362.83 (Medical Marijuana Program Act).

15-94 Prohibited Use

For the period of this ordinance or any extension thereof, marijuana cultivation, marijuana processing, and marijuana dispensaries, as defined herein, shall be considered prohibited uses in all non-residential zoning districts of the City. During the effective period of this ordinance, no use permit, variance, building permit, or any other entitlement or permit, whether administrative or discretionary, shall be approved or issued for the establishment or operation of a marijuana dispensary as defined herein in any non-residential zoning district, and no person shall otherwise establish such businesses or operations in any non-residential zoning district.

15-95 Council Direction

During the period of this ordinance, and any extension thereof, the City Council hereby directs the City Staff to: (1) Review and consider options for the regulation of marijuana cultivation, processing and dispensary uses in the City, including but not limited to the development of appropriate rules and regulations governing the location and operation of such uses; and (2) to issue a written report describing the measures which the City has taken to address the conditions which led to the adoption of this ordinance with the City Council ten (10) days prior the expiration of this interim urgency ordinance, or any extension thereof, and such report shall be made available to the public.

15-96 Authority

This interim urgency ordinance is enacted pursuant to the authority conferred upon the City Council of the City of Imperial by Government Code Section 65858, and therefore shall be in full force and effect immediately upon its adoption by a four-fifths (4/5) vote of the City Council. This interim urgency ordinance shall continue in effect for forty-five (45) days from the date of its adoption and shall thereafter be of no further force and effect unless, after notice pursuant to Government Code Section 65090 and a public hearing, the City Council extends the interim urgency ordinance for an additional period of time pursuant to Government Code Section 65858. Government Code Section 65858 further provides that such an urgency measure may be extended following compliance with that section for up to an additional twenty-two (22) months and fifteen (15) days beyond the original forty-five (45) day period.

15-97 CEQA

The City Council finds that this ordinance is not subject to the California Environmental Quality Act (“CEQA”) pursuant to CEQA Guidelines Sections 15060(c)(3) because this activity is not a project as defined by Section 15378 of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, and pursuant to CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty that it will not have a significant effect or physical change to the environment.

15-98 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 any competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each and every section, subsection, sentence, clause and phrase thereof not declared invalid or unconstitutional without regard to whether any portion the ordinance would be subsequently declared invalid or unconstitutional.

15-99 Notice

The City Clerk shall certify to the passage of this Interim Ordinance and shall cause the same to be posted at the designated locations in the City of Imperial. Any further extension of this Ordinance shall be noticed and published in accordance with City and State law.

The forgoing Ordinance was approved and adopted at a meeting of the City Council held on January 20, 2016 by the following vote:

- Ayes:
- Noes:
- Abstain:
- Absent:

Doug Cox, Mayor

ATTEST:

Debra Jackson, City Clerk