

ORDINANCE NO. 1264

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SIMI VALLEY ESTABLISHING A MORATORIUM PROHIBITING ALL MARIJUANA USES, OPERATIONS, AND ACTIVITIES AND ALL PERSONAL OUTDOOR CULTIVATION OF MARIJUANA WITHIN THE CITY, AND A DETERMINATION THAT THE ACTION IS EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SIMI VALLEY DOES ORDAIN AS FOLLOWS:

SECTION 1. Authority. This urgency Ordinance is adopted in accordance with provisions as set forth below:

A. California Constitution, Article 11, Section 7 authorizes a City Council to make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws to protect and promote the public health, safety, and welfare of its citizens.

B. Pursuant to California Government Code Section 65858, the City Council may as an urgency measure adopt an interim (urgency) ordinance by a four-fifths vote to protect the public health, safety, and welfare prohibiting any use that may be in conflict with a contemplated land use regulations that the City is studying or considering or intends to study within a reasonable time.

SECTION 2. Findings. The Simi Valley City Council finds, determines, and declares the following in support of the enactment of this urgency Ordinance.

A. This urgency Ordinance is exempt from review under the California Environmental Quality Act (California Public Resources Code Section 21000 et seq.) ("CEQA") and CEQA regulations (Title 14, California Code of Regulations Section 15000 et seq.) because this Amendment is covered by the general rule that CEQA only applies to projects that have the potential for causing a significant effect on the environment (Section 15061(b)(3)), and the ordinance does not create a significant effect on the environment because it would prohibit all marijuana uses, operations, and activities, prohibit marijuana smoking and ingesting at businesses, microbusinesses, or public places, and prohibit outdoor cultivation of personal marijuana by residents 21 years or older, except as allowed by the Compassionate Use Act.

B. The U.S. Congress enacted the Controlled Substances Act (United States Code, Title 21, Chapter 13, Section 801 et seq.), which, among other things, makes it illegal to use, possess, import, manufacture, distribute, or cultivate marijuana. Also, the use, possession, and cultivation of marijuana are unlawful and subject to federal prosecution without regard to a claimed medical need.

C. On November 5, 1996, California voters passed Proposition 215, “The Compassionate Use Act of 1996” (codified in California Health and Safety Code 11362.5), which allows medical marijuana use by qualified patients upon a physician’s recommendation. That the intent of this Act was to enable seriously ill Californians to legally possess, use, and cultivate marijuana for medical use under California law once a physician has deemed the use beneficial to a patient's health. In addition, the California Legislature adopted Senate Bill SB 420 in 2003 (codified in Health & Safety Code Section 11362.7 – 11362.83), which permits qualified patients and their primary caregivers to possess not more than eight ounces of dried marijuana per qualified patient and not more than six mature or 12 immature marijuana plants per qualified patient unless a medical doctor authorizes an additional amount consistent with the patient’s needs.

D. Neither the California Compassionate Use Act of 1996 or the Medical Marijuana Program require or impose an affirmative duty or mandate upon a city or county local government to allow, authorize, or sanction the establishment of facilities that cultivate or process medical marijuana within its jurisdiction.

E. Assembly Bill 1300 was adopted in 2011(codified as Health and Safety Code Section 11362.83) to clarify that city and county local governments may adopt and enforce local ordinances that regulate or prohibit the location, operation, or establishment of medical marijuana cooperatives or collectives.

F. On June 6, 2005, the United States Supreme Court issued its decision in the case of *Gonzales vs. Raich* which held that Congress, under the Commerce Clause of the United States Constitution, has the authority, and under the Federal Controlled Substances Act the power to, prosecute the local cultivation and use of marijuana, even if such use is in compliance with California law.

G. The City Council adopted Ordinance No. 1106, which became effective on January 18, 2007, to amend the Municipal Code to prohibit medical marijuana dispensaries within all zoning districts of the City of Simi Valley.

H. The California Supreme Court issued its decision in May 2013 in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc. et al.*, holding that city local governments have the authority to prohibit or ban medical marijuana land uses.

I. In *Maral v. City of Live Oak* (2013) 221 Cal. App. 4th 975, the Court of Appeal held that an ordinance which prohibited the cultivation of marijuana for any purpose was within the City’s police power and not preempted by the California Compassionate Use Act of 1996 or the California Medical Marijuana Program.

J. The California Medical Marijuana Regulation and Safety Act, which became effective on January 1, 2016, contains provisions that create a State regulatory structure and licensing system for the commercial medical cultivation, manufacture, retail sale, transport, distribution, transportation, delivery, and testing of medical marijuana (cannabis). Under this Act, no person shall engage in said commercial medical activities without both a State license or permit or other authorization from their

local City or County government (dual-licensing requirement). This Act also recognizes a range of medical marijuana referred to as “commercial cannabis activities,” including medical marijuana cultivation businesses, product manufacturers, distributors, transporters, testing laboratories, and dispensaries.

K. While the California Medical Marijuana Regulation and Safety Act expressly authorizes a city or county local government control to regulate or prohibit medical marijuana facilities and land uses in their jurisdictions, the Act provides that the State will be the sole licensing authority if the local government does not enact ordinances that expressly regulate or prohibit medical marijuana facilities and land uses. On February 3, 2016, Assembly Bill 21 was signed by the Governor to amend the Act’s language that local government retained the right to prohibit cultivation without exception to instead state “Exemption from the requirements of the section does not limit or prevent a city, county, or city and county from exercising its police authority under Section 7 of Article XI of the California Constitution” (codified in Health & Safety Code §1362.777(g)).

L. The City Council adopted Ordinance No. 1255, which became effective on April 13, 2016, to amend the Municipal Code land use regulations to expressly prohibit medical marijuana cultivation, processing, distribution, deliveries, collectives, and cooperatives within all zoning districts of the City of Simi Valley.

M. The California voters enacted Proposition 64, “The Control, Regulate and Tax Adult Use of Marijuana Act,” which became effective on November 9, 2016. This establishes a State regulatory structure, licensing system, and enforcement provision for commercial or non-medical marijuana cultivation, processing, manufacture, distribution, testing, and sale. The Act also contains provisions that:

- (1) Allow adult persons 21 years of age and older to possess, transport, purchase, obtain, or give away to persons 21 years old or older without compensation non-concentrated marijuana of not more than 28.5 grams (ounce) and 8 grams of concentrated marijuana. Also, smoking or ingesting marijuana or marijuana products is allowed for adults. Further, adults are allowed to possess, transport, purchase, obtain, or give away marijuana accessories to persons 21 years old or older (Health & Safety Code §11362.1);
- (2) Allow adult persons 21 years or older to plant, cultivate, harvest, dry, or process six live personal marijuana plants inside a single private residence or the inside the residence’s accessory structure that is fully enclosed and secured, or upon the grounds of that private residence that is fully enclosed and secured, at any one time. As defined, a residence includes a house, an apartment unit, a mobile home, or similar dwelling. Also, a city may reasonably regulate the cultivation, harvesting, drying, or processing of personal marijuana plants inside a private residence and inside the residence’s accessory structure and to completely prohibit outdoor cultivation of marijuana plants on the grounds of the residence, up

to and until a “determination by the California Attorney General that nonmedical use of marijuana is lawful in the State of California under federal laws” (Health & Safety Code §11362.2);

- (3) Prohibits the sale of commercial or non-medical marijuana by businesses that also sell alcohol or tobacco (Business & Professions Code §26054);
- (4) Permit cities to completely regulate or prohibit the establishment and operation of any business licensed under a new State licensing system, including commercial or non-medical marijuana cultivation, processing, manufacturing, testing, labeling, storing, distributing, sale, microbusinesses (Business & Professions Code §26200). The State agencies are required to promulgate rules and regulations to begin issuing licenses by January 1, 2018;
- (5) Permits cities to regulate or prohibit the smoking or ingesting of marijuana or marijuana products in any public place, such as a business or microbusiness (Business & Professions Code §26000); and
- (6) Prevents cities from prohibiting the transportation of marijuana on public roads between State licensees (Business & Professions Code §260809(b)).

N. Under the Simi Valley Municipal Code, medical marijuana dispensaries, cultivation, processing, distribution, collectives, cooperatives, dispensaries are expressly prohibited. While the Municipal Code’s “permissive zoning” land use regulations prohibit commercial and non-medical marijuana uses, operations, activities, it is the City Council desires to enact this urgency Ordinance to expressly make clear that all such uses, operations, activities are prohibited throughout the City.

O. Without sufficient regulations that are expressly enforceable pursuant to a permanent ordinance, the City Council finds that there is a current and immediate threat to the public health, safety, and welfare from ambiguous regulations, including the following harmful impacts:

1. 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. Also, 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;
2. The potential for burglary or robbery is high because marijuana plants are valuable. The U.S. Drug Enforcement Agency reports that each marijuana plant under various planting conditions may yield an average between one-half to two pounds in its lifetime.

Prices for domestically produced high-grade marijuana sold illegally within Northern California can reach \$2,000 to \$5,000 per pound;

3. The indoor residential cultivation of marijuana has potential adverse effects to the health and safety of the occupants, including damage to the structural integrity of a building from increased moisture and mold, risk of fire and electrocution from high intensity light fixtures, chemical contamination from the use of pesticides and fertilizers;
4. There is potential for exposure to or increased usage by school-aged children from non-secured areas used for either indoor or outdoor residential cultivation of any marijuana;
5. The manufacturing of marijuana products involve the use of chemicals and solvents, and as a result, the manufacturing of hash oil concentrate, often added to edibles, drinks and liquids, carries a significant risk of explosion due to the distillation process to extract tetrahydrocannabinol;
6. Several California cities have reported negative impacts of marijuana cultivation, processing and distribution activities, 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,
7. The California 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.

P. Based on the above, there is a current and immediate threat to the public health, safety, and welfare of City residents arising from the risks attributed with the cultivation, processing, manufacturing, testing, labeling, storing, distributing, sale, transportation, delivering, collectives, cooperatives, and dispensaries of marijuana, whether commercial or non-medical.

Q. In order to protect the public health, safety, and welfare, it is the City Council's desire to adopt this urgency Ordinance pursuant to Government Code §65858 to immediately address changes in State laws from the recent enactment of the California Control, Regulate and Tax Adult Use of Marijuana Act (Proposition 64), to establish a temporary moratorium for 45-days while the City develops a permanent ordinance with standards that expressly regulate and/or prohibit marijuana uses, operations, activities, and potential for unnecessary and costly litigation involving the interpretation of the Municipal code. The initial 45 days will permit City staff to study the matter and recommend a course of action to the City Council.

R. Failure to adopt this moratorium would impair the orderly and effective implementation of the City's General Plan as well as the Municipal Code's zoning regulations and other regulations.

SECTION 3. Imposition of Temporary Moratorium on Commercial and Non-Medical Uses, Operations, and Activities.

A. The findings and determinations in Section 2 above are true and correct.

B. Based on the foregoing, the City Council finds and declares there a current and immediate threat to the public, health, safety, and welfare, and upon that basis has determined that an urgency Ordinance pursuant to California Government Code §65858 is warranted and shall take effect on November 21, 2016, upon adoption by a four-fifths vote.

C. From the effective date of this urgency Ordinance, and continuing for a period of forty-five (45) days, unless later extended by the City Council pursuant to California Government Code §65858, the following are banned and shall prevail over any conflicting provision of the Simi Valley Municipal Code or other ordinances, resolutions, policies, and regulations of the City of Simi Valley:

- (1) All commercial marijuana uses, operations, and activities, whether for profit or not for profit, are prohibited in every zoning district, overlay district, specific plan or other areas within the City, including but not limited to: cultivation, processing, manufacturers, testing laboratories, labeling facilities, warehousing, storage, distributors, retailers, wholesalers, microbusinesses, deliveries, collectives, and cooperatives, whether for profit or not for profit. No business tax certificates, home occupation permits, zoning clearances, approvals or other entitlements shall be issued for these commercial or non-medical uses, operations, or activities.
- (2) Smoking or ingesting marijuana uses are prohibited in lounges, businesses, microbusinesses, collectives, cooperatives, or other similar uses within the City, whether for profit or not for profit. No business tax certificates, home occupation permits, zoning clearances, approvals or other entitlements shall be issued for these marijuana uses, operations, or activities.
- (3) All outdoor cultivation of personal marijuana on any land of a residence or on any vacant land within the City is prohibited. A private residence shall mean a house, townhome, condominium unit, an apartment unit, mobile home, or similar dwelling.
- (4) For the purposes of this urgency Ordinance, the following terms and phrases have the following meanings:

Dwelling. As defined in Section 9-80.020 of the Simi Valley Municipal Code.

Commercial Marijuana Activity. Has same meaning as “commercial marijuana activity” definition in California Business and Profession Code §26000, and including the commercial for profit, wholesale, or not for profit cultivation, processing, manufacturing, testing, research, labeling, warehousing, storage, distributing, sale, and delivery of marijuana.

Marijuana. Any or all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin or separated resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin, including marijuana infused in foodstuff or any other ingestible or consumable product containing marijuana. The term “marijuana” shall also include “medical marijuana” as such phrase is used 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 or subject to the provisions of California Health and Safety Code §11362.5 (Compassionate Use Act of 1996) or California Health and Safety Code §11362.7 to §11362.83 (Medical Marijuana Program Act).

Marijuana Accessories. Same meaning as “marijuana accessories” in of the California Health and Safety Code §11081.2, as any equipment, products or materials of any kind which are used, intended for use or designed for use in planting, propagating, cultivation, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repacking, labeling, storing, smoking, vaporizing, or containing marijuana or marijuana products into the human body.

Marijuana Activity. The commercial marijuana activity, including but not limited to possession, smoking, ingesting, cultivation, processing, manufacturing, testing, labeling, storing, distributing, sale, transportation, deliveries, collectives, cooperatives, businesses, microbusinesses, collectives, and cooperatives.

Marijuana Cultivation. The growing, planting, cloning, harvesting, drying, curing, grading, trimming, or processing of marijuana either indoors or outdoors.

Marijuana Deliveries and Transportation. Commercial delivery and transportation of marijuana to or from locations within the City of Simi Valley for and not for profit, except transportation of medical marijuana by a qualified patient and their primary caregiver only for

the qualified patients' medical use in strict accordance with California Business and Professional Code §19319 and by personal marijuana by an adult in strict accordance with California Health and Safety Code §11362.3.

Marijuana Dispensary. As defined in Chapter 5-41 of Simi Valley Municipal Code.

Marijuana Distribution. Has same meaning as “distribution” definition in California Business and Profession Code §26000, and including any procurement, sale, and transport of marijuana and marijuana products between State-licensed entities.

Marijuana Manufacture. Compound, blend, extract, infuse, or otherwise make or prepare a marijuana product.

Marijuana Manufacturer. Same meaning as “manufacturer” definition in California Business and Professions Code §26000, and including a person that conducts the production, preparation, propagation, or compounding of marijuana or marijuana products directly or indirectly or by extraction methods, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis at a fixed location that packages or repackages marijuana or marijuana products or labels or re-labels its container, that holds a State license.

Marijuana Operation. Same meaning as “operation” definition in California Business and Professions Code §26000, and including any act or and commercial transfer of marijuana requires a license by the State.

Marijuana Processing. 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.

Marijuana Products. Same meaning as “marijuana products” definition as of the Health and Safety Code §11018.1, and including marijuana that has undergone a process whereby the plant material has been transformed into a concentrate, including, but not limited to concentrated cannabis, or an edible or topical product containing marijuana or concentrated cannabis, and other ingredients.

Marijuana Testing. Same meaning as “testing service” definition in California Business and Professions Code §26000, and including a laboratory, facility, or entity that offers or performs test of marijuana or marijuana products, including the equipment provided by such laboratory, facility, or entity.

Medical Marijuana Collective or Cooperative. Any profit or not-for-profit group that is collectively or cooperatively cultivating and distributing marijuana for medical purposes is a prohibited land use in the City of Simi Valley. This collective or cooperative is also any profit or not-for-profit, including those group 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 or subject to the provisions of California Health and Safety Code §11362.5 (Compassionate Use Act of 1996) or California Health and Safety Code §11362.7 to §11362.83 (Medical Marijuana Program Act).

D. The City Council directs staff to study necessary amendments to the Municipal Code land use regulations and other regulations within the framework of the Control, Regulate and Tax Adult Use of Marijuana Act (Proposition 64), including a prohibition of commercial marijuana uses, operations, and activities, a prohibition of marijuana smoking and ingesting at businesses, microbusinesses, and other similar public places, prohibiting outdoor marijuana cultivation on a residence's property, regulations permitting indoor personal and medical cultivation inside a residence or accessory structure of residence.

SECTION 4. Penalty for Violation. No person, whether principal, agent, employee or otherwise, shall violate, cause the violation of, or otherwise fail to comply with any requirement of Section 3 of this urgency Ordinance. Every act prohibited or declared unlawful, and every failure to perform an act made mandatory by said Section 3, shall constitute a misdemeanor or infraction and punishable by a fine not exceeding one thousand dollars (\$1,000) or imprisonment for a period not exceeding six (6) months, or by both such fine and imprisonment, at the discretion of the City Attorney. In addition to the penalties provided in this section, any condition caused or permitted to exist in violation of any of the provisions of said Section 3 is declared a public nuisance and may be abated as set forth in Title 1 Chapter 6 of the Simi Valley Municipal Code, as well as any other manner provided for by law for the abatement of public nuisances.

SECTION 5. Severability. If any provision of this Ordinance is declared invalid by a court of competent jurisdiction, adjudicated to a final determination, the City Council finds that said voided part is severable, that the City Council would have adopted the remainder of this Ordinance without the severed and voided part, and that the remainder of this Ordinance shall remain in full force and effect.

SECTION 6. Incompatible Provisions. To the extent any provision of this Ordinance is incompatible with or at variance with any prior adopted ordinance or resolution, the provision of this Ordinance shall take precedence.

SECTION 7. The City Clerk shall cause this ordinance or a summary hereof to be published in a newspaper of general circulation, published in the County of Ventura and circulated in the City, and if applicable, to be posted, in accordance with §36933 of the California Government Code; shall certify to the adoption of this

ordinance and shall cause a certified copy of this ordinance, together with proof of publication, to be filed in the Office of the Clerk of this City.

PASSED and ADOPTED this 5th day of December 2016.

Attest:

/s/
Ky Spangler, Deputy Director/City Clerk

/s/
Robert O. Huber, Mayor of the City of
Simi Valley, California

Approved as to Form:

Approved as to Content:

/s/
Lonnie J. Eldridge, City Attorney

/s/
Eric J. Levitt, City Manager

/s/
Peter Lyons, Director
Department of Environmental Services