

ORDINANCE NUMBER O- 20776 (NEW SERIES)

DATE OF FINAL PASSAGE DEC 13 2016

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO ADOPTING THE FINDINGS AND DECLARATIONS FOR A TEMPORARY MORATORIUM ON NON-MEDICAL MARIJUANA-RELATED BUSINESSES PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTION 65858.

WHEREAS, the City of San Diego currently regulates medical marijuana through its San Diego Municipal Code; and

WHEREAS, Proposition 64, also known as the Adult Use of Marijuana Act (AUMA), was approved by the voters on November 8, 2016. As a result, it is no longer illegal under state law, regardless of medical purposes, to: (1) possess, process, transport, purchase, obtain, or give away certain amounts of marijuana or concentrated cannabis, including as contained in marijuana products, to those 21 years old or older; (2) possess, plant, cultivate, harvest, dry, or process not more than six living plants and the marijuana produced by those plants; (3) smoke or ingest marijuana or marijuana products; and (4) possess, transport, purchase, obtain, use, manufacture, or give away marijuana accessories without compensation to those 21 years old or older; and

WHEREAS, the AUMA also, upon passage, legalized the personal cultivation of not more than six living plants within a single private residence or upon its grounds, but requires the plants and any marijuana produced in excess of 28.5 grams to be kept within the single private residence, or upon the grounds of the private residence, in a locked space, and not visible by normal, unaided vision from a public place, subject to local regulations, if any; and

WHEREAS, the City may not prohibit personal indoor non-medical marijuana cultivation, but may enact reasonable regulations, and may completely prohibit personal outdoor

non-medical marijuana cultivation, up to and until a “determination by the California Attorney General that non-medical use of marijuana is lawful in the State of California under federal law”; and

WHEREAS, to regulate the commercial non-medical marijuana industry, the AUMA adds Division 10 to the California Business and Professions Code, establishing state licensing requirements for commercial marijuana activity, defined as the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, labeling, transportation, delivery, or sale of marijuana and marijuana products, again regardless of medical purposes and granting state agencies the “exclusive authority to create, issue, renew, discipline, suspend, or revoke” licenses for businesses including the transportation, storage, distribution, sale, cultivation, manufacturing, and testing of marijuana, except as otherwise authorized. The AUMA states that these state agencies shall create the rules and regulations relating to these activities and begin issuing licenses by January 1, 2018; and

WHEREAS, the AUMA allows local governments authority to prohibit or regulate commercial marijuana activities and subject the commercial marijuana activities to zoning and permitting requirements; and

WHEREAS, the City of San Diego does not currently have explicit land use, zoning, and permitting requirements or prohibitions in place regarding commercial marijuana activities; and

WHEREAS, absent appropriate local regulation as authorized by the AUMA, personal outdoor non-medical marijuana cultivation, within certain limits, is legal by right immediately after the passage of Proposition 64; and

WHEREAS, the California Attorney General’s August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use recognizes that 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, if the State of California begins issuing licenses for commercial non-medical marijuana activities prior to the City adopting appropriate land use, zoning, and public safety regulations, negative effects on the public health, safety, and welfare would likely occur as a result of commercial non-medical activities near schools, parks, residential zones, and other sensitive receptors; and

WHEREAS, based on the City's own experience with medical marijuana-related businesses, without adequate land use, zoning, and permitting requirements in place, coupled with strong enforcement, there was a proliferation of illegal medical marijuana businesses that numbered in the hundreds that operated in inappropriate zones, near sensitive receptors, or out of compliance with applicable municipal codes and regulations; and

WHEREAS, based on the findings herein, the state legalization of personal outdoor non-medical marijuana cultivation and commercial marijuana activities 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 public safety impacts of such unregulated uses; and

WHEREAS, it is in the interest of the City and its residents that the City undertake a review to consider zoning, land use, and public safety measures to prohibit or regulate personal outdoor non-medical marijuana cultivation and commercial marijuana activities; and

WHEREAS, California Government Code Section 65858 expressly authorizes the City Council to adopt by four-fifths (4/5) vote, without following the procedures otherwise required for the adoption of a zoning ordinance, an urgency ordinance which is necessary for the immediate protection of the public health, safety, and welfare; and

WHEREAS, the City Council intends to keep this urgency ordinance in effect only until the adoption of an ordinance that establishes a comprehensive policy as it relates to personal outdoor non-medical marijuana cultivation and commercial marijuana activities; and

WHEREAS, the City Council also intends for the City to immediately begin work to consider and study a comprehensive policy regarding personal outdoor non-medical marijuana cultivation and commercial marijuana activities and enact a policy as soon as possible; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. The recitals above are incorporated herein.

Section 2. The City Council hereby finds, determines, and declares that this urgency ordinance establishing a temporary moratorium as set forth below and adopted pursuant to California Government Code 65858 is necessary because:

A. Certain provisions of AUMA became effective immediately on November 9, 2016, and the AUMA directs the State of California to start issuing licenses for non-medical marijuana-related businesses by January 1, 2018 or sooner. The AUMA allows local governments to prohibit or reasonably regulate certain activities thereunder.

B. The City of San Diego does not currently have explicit land use, zoning, and permitting requirements in place governing activities relating to commercial marijuana activities.

C. The City needs time to consider, review, and enact a comprehensive policy relating to commercial marijuana activities, and therefore, it is necessary to suspend any establishment of commercial marijuana activities as such use may be in conflict with the development standards and implementation regulations that the City will ultimately

impose after the City has considered and studied the issue, which shall be accomplished in an expedited fashion.

D. A temporary moratorium will provide the City with time to study commercial marijuana activities and potential impacts such land uses may have on the public health, safety, and welfare.

E. A temporary moratorium will also provide clarity and consistency that the City will not allow the establishment of commercial non-medical marijuana activities until the City has established a comprehensive policy regulating such operations and the State of California begins issuing licenses for such operations.

F. There is a current and immediate threat to the public health, safety, and welfare of the City and its communities, thereby necessitating the immediate enactment of this moratorium as an urgency ordinance in order to ensure commercial marijuana activities are prohibited in the City, until a comprehensive policy is adopted. Imposition of a moratorium will allow the City sufficient time to conclude the preparation and enactment of a comprehensive ordinance for the regulation of commercial marijuana activities.

Section 3. The following are prohibited pursuant to this Ordinance, so long as this Ordinance and any extensions are in effect:

A. *Commercial non-medical marijuana activities*, defined as the *cultivation*, possession, *manufacture*, *distribution*, processing, storing, laboratory *testing*, labeling, transportation, *delivery*, or *sale of marijuana, marijuana products*, and *marijuana accessories*.

Section 4. That the italicized terms in Section 3 shall be interpreted in accordance with their definitions in the AUMA.

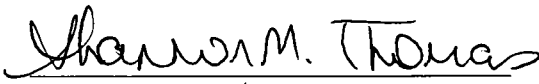
Section 5. That this Ordinance, being an urgency ordinance, is effective upon the day of its passage, and is effective for 45 days from the date of its passage, unless extended in accordance with California Government Code section 65858 at a noticed public hearing.

Section 6. That a full reading of this Ordinance is dispensed with prior to passage, a written copy having been made available to the Council and the public prior to the day of its passage.

Section 7. That, as an urgency ordinance, this Ordinance is not subject to veto.

Section 8. That, upon final passage, the Clerk is directed to transmit copies of this Ordinance to the State of California Departments of Consumer Affairs (Bureau of Marijuana Control), Food and Agriculture, and Public Health.

APPROVED: MARA W. ELLIOTT, City Attorney

By 
Shannon M. Thomas
Deputy City Attorney

SMT:als
11/23/2016
12/06/2017 Rev. Copy
Or.Dept: Council Dist. 2
Doc. No.: 1395540_3

Passed by the Council of The City of San Diego on DEC 13 2016, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Barbara Bry	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lorie Zapf	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Ward	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Myrtle Cole	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mark Kersey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Cate	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scott Sherman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
David Alvarez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Georgette Gomez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage DEC 13 2016

AUTHENTICATED BY:

KEVIN L. FAULCONER
Mayor of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By [Signature], Deputy

I HEREBY CERTIFY that the foregoing ordinance was passed on the day of its introduction, to wit, on DEC 13 2016, said ordinance being of the kind and character authorized for passage on its introduction by Section 295 of the Charter.

I FURTHER CERTIFY that said ordinance was read in full prior to passage or that such reading was dispensed with by a vote of five members of the Council, and that a written copy of the ordinance was made available to each member of the Council and the public prior to the day of its passage.

(Seal)

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By [Signature], Deputy

Office of the City Clerk, San Diego, California
Ordinance Number O- 20776