

ORDINANCE NO. 1916

INTERIM ORDINANCE OF THE CITY COUNCIL OF THE CITY OF VACAVILLE IMPOSING AS AN URGENCY MEASURE A MORATORIUM ON THE APPROVAL, COMMENCEMENT, ESTABLISHMENT, OR OPERATION OF ALL COMMERCIAL, INDUSTRIAL, AND RETAIL CANNABIS LAND USES, DELIVERIES, AND ALL OUTDOOR CANNABIS CULTIVATION

WHEREAS, “cannabis” is defined by Section 26001(f) of the Business and Professions Code to mean all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the 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; but not the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination, or industrial hemp as defined by Section 11018.5 of the Health and Safety Code; and

WHEREAS, “cannabis products” is defined by Section 26001(i) of the Business and Professions Code to mean the same as defined under Section 11018.1 of the Health and Safety Code, which states that “cannabis products” means cannabis 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 cannabis or concentrated cannabis and other ingredients; and

WHEREAS, “medicinal cannabis” is defined by Section 26001(ai) of the Business and Professions Code to mean cannabis or a cannabis product, respectively, intended to be sold for use pursuant to the Compassionate Use Act of 1996 (“Proposition 215”), found at Section 11362.5 of the Health and Safety Code, by a medicinal cannabis patient in California who possesses a physician’s recommendation; and

WHEREAS, “commercial cannabis activity” is defined by Section 26001(k) of the Business and Professions Code to mean activities that include the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery or sale of cannabis and cannabis products; and

WHEREAS, “dispensary” was formerly defined under Section 19300.5(n) of the Business and Professions Code to mean a premises where medical cannabis, medical cannabis products, or devices for the use of medical cannabis or medical cannabis products are offered, either individually or in any combination, for retail sale, including an establishment that delivers, pursuant to Section 19340 of the Business and Professions Code, medical cannabis and medical cannabis products as part of a retail sale; and

WHEREAS, the term “dispensary” is now replaced by the term “premises” under Section 26001(ap) of the Business and Professions Code to mean the designated structure or structures and land specified in the application that is owned, leased, or otherwise held under the control of the applicant or licensee where the commercial cannabis activity will be or is conducted, and that the premises shall be a contiguous area and shall only be occupied by one licensee; and

WHEREAS, “delivery” is defined under Section 26001(p) of the Business and Professions Code to mean the commercial transfer of cannabis or cannabis products to a customer, and includes the use of a retailer of any technology platform owned and controlled by the retailer; and

WHEREAS, “sell”, “sale”, and “to sell” is defined under Section 26001(as) of the Business and Professions Code to include any transaction whereby, for any consideration, title to cannabis or cannabis products is transferred from one person to another, and includes the delivery of cannabis or cannabis products pursuant to an order placed for the purchase of the same and soliciting or receiving an order for the same, but does not include the return of cannabis or cannabis products by a licensee to the licensee from whom the cannabis or cannabis product was purchased; and

WHEREAS, the City Council adopted Ordinance No. 1892 on January 26, 2016 in order to, among other things, expressly prohibit in all zoning districts in the City of Vacaville, medical commercial cannabis activity, as well as personal cultivation of medical cannabis; and

WHEREAS, pursuant to Ordinance No. 1892, the City Council determined to review the City’s medical cannabis regulations no later than February 26, 2018 in order to engage community dialogue and ensure the City’s Municipal Code protects the health and safety of its residents while appropriately regulating medical cannabis; and

WHEREAS, the City Council intended for the prohibition of any medical commercial cannabis activity in the City, combined with the State’s pre-AUMA prohibition of recreational commercial cannabis activity, including but not limited to, cannabis cultivation and recreational cannabis dispensaries, to encompass all potential commercial-scale cannabis uses until such time as the City adequately considered zoning proposals for commercial cannabis activity and adopted appropriate ordinances and regulations, as necessary; and

WHEREAS, Proposition 64 (2016), also known as “The Control, Regulate and Tax Adult Use of Marijuana Act” (“AUMA”), passed and took effect on November 9, 2016, and which authorized, among other things, personal non-medical use of cannabis and proposed to create a Statewide licensing scheme for commercial non-medical cannabis businesses; and

WHEREAS, pursuant to the AUMA and Senate Bill 94 signed into law by Governor Brown on June 27, 2017, also known as the “Medicinal and Adult-Use Cannabis Regulation and Safety Act” (“MAUCRSA”), the Bureau of Cannabis Control, California Department of Food and Agriculture, and California Department of Public Health are currently developing regulations (“State Regulations”) for State licensing of medical and non-medical cannabis businesses for commercial cannabis activity; and

WHEREAS, Governor Brown signed Assembly Bill 133 into law on September 16, 2017, entitled “Committee on Budget, Cannabis Regulation”, which revises the laws on regulations for applicants to submit evidence of local agency approval to State licensing entities and for said entities to notify local agency upon submission of such evidence; deletes prohibition against testing labs delivering and transporting cannabis and/or products; allows Bureau of Cannabis Control to set standards for cannabis purchases by primary caregivers; and increases lawful possession of concentrated cannabis from 4 grams to 8 grams, among other changes; and

WHEREAS, the State Regulations are required by State law to consider and mitigate a variety of identified environmental impacts and secondary effects related to commercial cannabis activity, including water diversion, electricity usage, agricultural discharges, land conversion, use of nonvolatile and volatile solvents in production, and adequate security measures to protect against diversion, theft, loss or other criminal activity related to commercial storage and distribution of medical and non-medical cannabis; and

WHEREAS, such State Regulations are not estimated to be fully developed and adopted until late 2017 at the earliest, with State licenses estimated to begin issuing on or around January 1, 2018, notwithstanding potential impacts or delays caused by passage of the AUMA and MAUCRSA; and

WHEREAS, the AUMA and MAUCRSA contain provisions granting local jurisdictions control over whether commercial cannabis activity may occur in a particular jurisdiction and allow local jurisdictions to adopt and enforce local ordinances regulating the establishment and/or operation of commercial cannabis businesses licensed by the State; and

WHEREAS, there may be cannabis activity businesses that the City may wish to expressly permit, and the City does not want to undermine efforts that may have a positive impact on the community; and

WHEREAS, City staff is therefore currently considering, studying and analyzing various medical and non-medical cannabis uses in light of the new and proposed State law and State Regulations referenced above, including proposed amendments to the City's existing zoning regulations to prohibit, permit, or conditionally permit certain commercial cannabis activity businesses; and

WHEREAS, the City has received inquiries from the public related to the establishment of commercial cannabis activity businesses in the City, including an inquiry of whether a commercial cannabis premise is currently a permitted use in the City; and

WHEREAS, the unintended and unregulated establishment of commercial cannabis activity businesses at this time, poses a variety of potential known and unknown adverse impacts, such as offensive odors, gases, and other discharges related to commercial scale processing of cannabis products, unsafe or disapproved use of volatile and nonvolatile solvents intended to be regulated by the State regulations, excess or dangerous waste, water, and electricity usage, and theft, fire, or other crime or dangers related to the storage and commercial distribution of commercial-scale quantities of cannabis; and

WHEREAS, the enactment of the AUMA and MAUCRSA further complicates potential development and application of zoning regulations related to personal cultivation and commercial cannabis activity businesses; and

WHEREAS, in light of the potential known and unknown adverse impacts of commercial cannabis activity businesses, currently unregulated by State or local law, potentially rapid change of State laws and ongoing development of State regulations, and City Staff's ongoing study of zoning proposals related to cannabis activity businesses, the City Council finds that the current establishment, creation, or expansion of commercial cannabis activity businesses would create a current and immediate threat to the health, safety, and welfare of the City, its residents and non-cannabis activity businesses; and

WHEREAS, the City Council further finds that the establishment or creation of such commercial cannabis activity businesses without appropriate regulation, or the allowance of outdoor personal cultivation of medical and non-medical cannabis, or the allowance of unregulated indoor personal cultivation of medical and non-medical cannabis, might conflict with or be inconsistent with surrounding uses and intended zoning requirements, and if allowed to proceed under current zoning, commercial cannabis activity could conflict with, and defeat the purpose of, the proposal to study and adopt new regulations, consistent with State law, regarding commercial and non-commercial cannabis activity; and

WHEREAS, the City Council therefore desires to temporarily prohibit all commercial medical and non-medical cannabis activity, including cannabis activity businesses, and to regulate all non-commercial medical and non-medical cannabis activity, to provide adequate time to continue studying zoning proposals related to commercial and non-commercial medical and non-medical cannabis activity, and adopt regulations as necessary; and

WHEREAS, this urgency Ordinance is adopted pursuant to the requirements of Section 65858 of the Government Code.

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

SECTION 1. FINDINGS, DECLARATION OF URGENCY.

The City Council of Vacaville hereby finds and declares that there is a need to enact an urgency interim ordinance establishing a moratorium on the establishment or creation of all cannabis activity in all zoning districts in the City, subject to the findings and conditions contained in this Ordinance. The City Council hereby incorporates the findings set forth in the recitals stated above. The City makes this declaration of urgency based, in part, on recent inquiries regarding the allowance of medical and non-medical commercial cannabis activity businesses in the City, as well as general inquiries regarding the passage of AUMA and the MAUCRSA, and the establishment of similar commercial cannabis activity businesses within the State. Specifically, the City Council makes the following findings:

- (a) The City of Vacaville General Plan does not presently contain a goal or policy or textual discussion of the issue of a prospective use of commercial cannabis activity businesses or any cannabis cultivation.
- (b) The Vacaville Municipal Code currently prohibits medical cannabis establishments through February 26, 2018, and does not address or regulate the existence or location of any commercial cannabis activities or businesses, operator licensing, or commercial or personal cultivation of cannabis.
- (c) In other states where cannabis activities are allowed under local and state law and California cities that have permitted commercial cannabis activities, issues and concerns have arisen related, for example, to the over-concentration of cannabis premises in certain areas, reported increases in loitering, illegal drug activity, burglaries, robberies, and other criminal activity within and around the commercial cannabis activities, as well as increased pedestrian and vehicular traffic, noise and parking violations. Cannabis premises have also resulted in increased demands for police response, as well as maintenance of public streets and sidewalks.

- (d) If commercial cannabis activity businesses are allowed to proceed without appropriate review of location and operational criteria and standards, including the safe and appropriate use of security measures adequate to protect against theft and crime of commercial-scale quantities of cannabis, such businesses could have deleterious effects on surrounding neighborhoods and businesses that present a clear and immediate danger to the public health, safety and welfare.
- (e) Given the passage of the AUMA and the MAUCRSA, which authorize local jurisdictions to adopt and enforce local ordinances to regulate and prohibit businesses licensed under the AUMA and the MAUCRSA, and to regulate personal indoor cultivation, and/or prohibit personal outdoor cannabis cultivation, the unfettered licensing of such businesses or cultivation conflicts with, and defeats the purpose and intent of, current zoning requirements that prohibit such businesses and/or personal cultivation of medical cannabis in all zoning districts due to nuisance, crime, and aesthetic factors. Allowance of any non-medical, commercial cannabis activity businesses would likewise directly conflict with, and defeat the purpose and intent of, the current prohibition on commercial cultivation and cannabis premises in the City until such time as the City has considered such cannabis activity and/or adopted appropriate ordinances and regulations.
- (f) The City Council finds that if establishment or development of medical or non-medical cannabis activity businesses were allowed to proceed while the City is studying zoning ordinances and regulations for such activity, it would defeat the purpose of studying and considering zoning proposals to regulate and/or prohibit certain medical and non-medical cannabis activity businesses and personal cultivation.
- (g) Failure to enact this moratorium may result in significant irreversible changes to neighborhood and community character, and may ultimate conflict with new and pending State law and State Regulations and City ordinances and regulations.
- (h) The manufacture, distribution or possession of marijuana for any purpose remains illegal under federal law.
- (i) Based on the foregoing, the City Council does hereby declare this urgency Ordinance is necessary to protect the public health, safety, and welfare while the City is considering revisions to existing zoning regulations related to cannabis activity businesses and personal cultivation.

SECTION 2. MORATORIUM.

Except as provided in Section 3 of this Ordinance, the City Council hereby declares a moratorium on any and all industrial, retail and commercial cannabis activity land uses, deliveries, and all outdoor cannabis cultivation within all zoning districts in the City. The City shall not approve or issue land use approvals or permits, including but not limited to General Plan, zoning, or Municipal Code amendments or interpretations, conditional use permits, variances, tentative subdivision or parcel maps, site plan approvals, design review approvals, and building permits, business licenses, or other applicable entitlements for the establishment or creation of commercial cannabis activity businesses, deliveries, or outdoor cultivation during this moratorium.

SECTION 3. EXEMPTIONS.

This moratorium shall not apply those cannabis activity already expressly permitted or conditionally permitted in the City by operation of State law. Specifically, this moratorium does not apply to indoor personal cultivation of medical cannabis, which medical cannabis cultivation is permitted and regulated by Sections 11362.769 and 11362.77 of the Health and Safety Code, or to indoor personal cultivation of non-medical cannabis, which non-medical cannabis cultivation is permitted and regulated by Section 11362.2 of the Health and Safety Code. Furthermore, this Ordinance does not apply to, nor seek to restrict, in any way the rights granted to medical patients within this community under Proposition 215 and Senate Bill 420 (2003), which recognizes the rights of patients and caregivers to associate under the form of collectives or cooperatives, for their medical cannabis needs. These forms of association are not included in the definition of "commercial cannabis activity" found in Section 4 of this Ordinance. This exemption does not modify the prohibition against medical cannabis dispensaries currently in effect under the Vacaville Municipal Code.

SECTION 4. DEFINITIONS.

As used herein, "cannabis" means all and/or any parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, or any derivation thereof, including but not limited to any type of hybrid strains and/or landrace strains (colloquially known as heirlooms), whether growing or not; the seeds thereof; the 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. "Cannabis" also means the separated resin, whether crude or purified, obtained from any cannabis plant, and cannabis as defined by Section 11018 of the Health and Safety Code. For purposes of this Ordinance, "cannabis" includes both medical and non-medical cannabis and medical and non-medical cannabis products.

As used herein, "commercial cannabis activity", also sometimes referred to as "industrial, retail, and commercial cannabis land uses", means and includes any and all cannabis activity wherever situated, whether in an industrial, retail, and commercial zone, and further means and includes but is not limited to advertising, cultivation, manufacturing, production, preparation, refining, compounding, processing, blending, extracting, infusing, storing, labeling, packaging or repackaging, transporting, distributing, delivering, selling, or trading/bartering for donation of anything of value, including services, any wholesale or retail sales of cannabis or cannabis products; managing logistics of any nature related to cannabis cultivation, extraction, tests, sales, or trading/bartering, and/or managing logistics of any nature related to cannabis product manufacturing, and/or managing logistics of any nature related to cannabis and cannabis product distribution, delivery, selling, or trading/bartering wholesale or retail; and any business, person, or entity that conducts or engages in these commercial cannabis activity.

"Outdoor cannabis cultivation" shall mean outdoor cultivation, planting, growing, harvesting, drying, curing, grading, or trimming of medical and non-medical cannabis.

SECTION 5. EXISTING PROHIBITIONS NOT AFFECTED.

This Ordinance shall operate in tandem with all cannabis activity already prohibited by the City's Code, including the current prohibition of medical cannabis premises set forth in Vacaville Municipal Code section 9.13.020, and outdoor and commercial cultivation prohibited by Vacaville Municipal Code section 9.13.020, to the extent not in conflict with State laws. In the instance a conflict exists between this Ordinance and the prohibitions set forth under Vacaville

Municipal Code section 9.13, the more restrictive regulation prohibiting cannabis activity shall prevail.

SECTION 6. PENALTIES.

Pursuant to Chapter 1.16 of the Vacaville Municipal Code, violation of any provision of this ordinance shall constitute a misdemeanor and shall be punishable by a fine or imprisonment, or both. Each and every day such a violation exists shall constitute a separate and distinct violation of this ordinance. In addition to the foregoing, any violation of this ordinance shall constitute a public nuisance and shall be subject to abatement and administrative fines as provided by all applicable provisions of State and local law.

SECTION 7. ENVIRONMENTAL ANALYSIS.

With respect to compliance with the California Environmental Quality Act ("CEQA"), the City Council finds as follows:

- A. This ordinance is not a "project" within the meaning of Section 15378 of the State CEQA Guidelines, because it has no potential for resulting in physical change in the environment, directly or ultimately. This ordinance does not, in itself, allow the operation of any cannabis activities; therefore there is no potential for resulting in physical change in the environment, directly or ultimately.
- B. This ordinance is categorically exempt from CEQA under Section 15308 of the State CEQA Guidelines. This ordinance is a regulatory action taken by the City in accordance with Government Code Section 65858, to assure maintenance and protection of the environment pending the completion of contemplated zoning ordinance revisions.
- C. This ordinance is covered by the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment. For the reasons set forth in subparagraphs (A) and (B) of this paragraph, it can be seen with certainty that there is no possibility that this ordinance will have a significant effect on the environment and, therefore, the ordinance is not subject to CEQA.

SECTION 8. SEVERABILITY.

If any section, subsection, phrase, or clause of this ordinance is for any reason held to be unconstitutional, 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 section, subsection, phrase or clause thereof irrespective of the fact that any one or more sections, subsections, phrases, or clauses be declared unconstitutional.

SECTION 9. EFFECTIVE DATE.

This Interim Ordinance shall become effective immediately and shall remain in full force and effect for a period of forty-five (45) days from passage, unless extended prior to its expiration by further action of the City Council pursuant to Section 65858 of the Government Code.

SECTION 10. PUBLICATION:

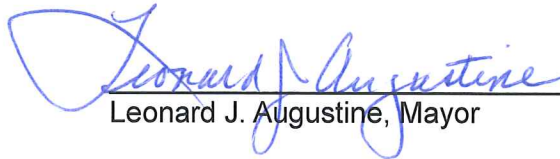
This ordinance shall be published in accordance with the provisions of Government Code Section 36933.

I HEREBY CERTIFY that the foregoing ordinance was introduced and passed as an urgency measure by a four-fifths roll call vote of the City Council of the City of Vacaville at a regular meeting of the City Council held on the 26th day of September, 2017 by the following vote:

AYES: Councilmembers Hunt, Mashburn, Rowlett, Vice Mayor Harris and Mayor Augustine

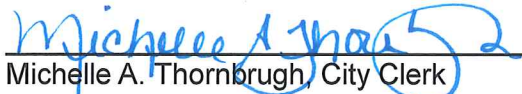
NOES: None

ABSENT: None



Leonard J. Augustine, Mayor

ATTEST:



Michelle A. Thornbrugh, City Clerk

Dated: Sept. 29, 2017