

ORDINANCE NO. 900

AN INTERIM ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RANCHO CUCAMONGA, CALIFORNIA, PROHIBITING ALL COMMERCIAL NON-MEDICAL MARIJUANA ACTIVITY IN THE CITY, PROHIBITING OUTDOOR MARIJUANA CULTIVATION ON PRIVATE RESIDENCES, AND ADOPTING REGULATIONS REGARDING INDOOR CULTIVATION IN PRIVATE RESIDENCES AND DECLARING THE URGENCY THEREOF

A. Recitals.

1. The Control, Regulate and Tax Adult Use of Marijuana Act ("AUMA") was approved by the voters on November 8, 2016. The AUMA, among other things, legalizes the use of non-medical marijuana for those who are 21 years of age or older and establishes a comprehensive system to regulate commercial non-medical marijuana activity. The provisions of the AUMA related to the possession, use, and cultivation of non-medical marijuana became effective on November 9, 2016.

2. The AUMA permits cities to: (1) adopt and enforce local ordinances to regulate non-medical marijuana businesses, including, but not limited to, local zoning and land use requirements, business license requirements, and requirements related to reducing exposure to secondhand smoke, or (2) completely prohibit the establishment or operation of one or more types of marijuana businesses within its jurisdiction.

3. The AUMA grants State agencies the authority to create, issue, renew, discipline, suspend, or revoke licenses for marijuana businesses provided that a State licensing authority shall not approve an application for a State license for commercial non-medical marijuana activity if approval of the State license will violate the provisions of any local ordinance. Furthermore, the AUMA requires the State to begin issuing licenses to non-medical marijuana businesses by January 1, 2018.

4. The AUMA allows for the planting, cultivation, harvesting, drying, and processing ("cultivation activities") of up to six marijuana plants in, or upon the grounds of, a private residence. The AUMA authorizes a city to enact and enforce an ordinance that reasonably regulates cultivation activities, and to completely prohibit cultivation activities outdoors upon the grounds of a private residence unless the California Attorney General determines that non-medical use of marijuana is lawful in the State under federal law.

5. The Federal Controlled Substances Act, 21 U.S.C. § 801, *et seq.*, classifies marijuana as a Schedule 1 Drug, which is defined as a drug or other substance that has a high potential for abuse, that has no currently accepted medical use in treatment in the United States, and that has not been accepted as safe for use under medical supervision. The Federal Controlled Substances Act 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.

6. Cities in California have reported negative effects 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. Furthermore, as marijuana plants begin to flower, and for a period of two months or more, the plants produce a strong, unique odor, offensive to many people, and detectable far beyond property boundaries if grown outdoors. This odor can have the effect of encouraging theft by alerting persons to the location of the valuable plants, and creating a risk of burglary, robbery, or armed robbery of the plants and creating the potential for violent acts related to such criminal activity.

7. The City has introduced and conducted a second reading of Ordinance No. 897 that prohibits all cannabis (also known as marijuana) cultivation and commercial cannabis uses in the City. Ordinance No. 897 will go into effect on December 2, 2016. Ordinance No. 897 was enacted in response to the Medical Cannabis Regulation and Safety Act, which established a State licensing scheme related to medical cannabis and primarily prohibits medical cannabis activities.

8. All legal prerequisites to the adoption of this Ordinance have occurred.

B. Ordinance.

NOW, THEREFORE, the City Council hereby ordains as follows:

Section 1. The City Council finds that the facts set forth in the Recitals, Part A, of this Ordinance are true and correct.

Section 2. Based upon facts found to be true in Section 1 of this Ordinance and all other information available to the City Council concerning the subject matter of this Ordinance, the City Council finds that commercial cannabis activities and the unregulated cultivation of marijuana pursuant to the AUMA in the City before the City has an opportunity to adopt regulations pursuant to the standard procedures of the City would create a public health and safety danger. Based on the City's need for additional time to fully evaluate the primary and secondary effects of the activities to be licensed under the AUMA, the City Council finds that the immediate preservation of the public health, safety and welfare requires that this interim Ordinance be enacted as an urgency ordinance pursuant to Government Code Section 65858 and take effect immediately upon adoption, and its urgency is hereby declared.

Section 3. Definitions. Hereinafter in this Ordinance, the following words shall have the meanings set forth below unless the context otherwise permits or requires:

"AUMA" refers to the Control, Regulate and Tax Adult Use of Marijuana Act.

"Commercial non-medical marijuana activity" shall include the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, labeling, transportation, delivery, or sale of marijuana and marijuana products for non-medical purposes.

"Cultivation" shall include any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of marijuana.

"Delivery" shall mean the commercial transfer of marijuana or marijuana products to a customer. Delivery also includes the use by a retailer of any technology platform owned and controlled by retailer, or independently licensed under the AUMA that enables customers to

arrange for or facilitate the commercial transfer by a State licensed retailer of marijuana or marijuana products.

“Marijuana” shall include all parts of the plant *Cannabis sativa* L., whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin. It does not include (a) industrial hemp, as defined in Section 11018.5 of the Health and Safety Code; (b) the weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other product; and (c) marijuana that is cultivated, processed, transported, distributed, or sold for medical purposes under Chapter 3.4 of Division 8 of the Business and Professions Code.

Section 4. Prohibitions and Regulations.

a. Commercial non-medical marijuana activity is expressly prohibited in all zones and all specific plan areas in the City of Rancho Cucamonga. No person shall establish, operate, maintain, conduct, or allow commercial non-medical marijuana activity anywhere within the City. No application for a building permit, conditional use permit, business license, or any other entitlement authorizing the establishment, operation, maintenance, development, or construction of any use that allows for commercial non-medical marijuana activity shall be accepted or approved during the term of the prohibition established in this Ordinance.

b. This Section 4 is intended in part to prohibit all activities for which a State license is required pursuant to the AUMA. Accordingly, the City shall not issue any permit, license, or other entitlement for any activity for which a State license is required under the AUMA. The City shall also not issue any local license to a non-profit pursuant to provisions of Business and Professions Code section 26070.5.

c. To the extent not already prohibited elsewhere in this Section 4, delivery of marijuana, marijuana products, or both originating in the City, terminating in the City, or both is expressly prohibited. No person shall conduct or perform any delivery of any marijuana or marijuana product, which delivery either originates in the City, terminates in the City, or both.

d. Marijuana shall not be cultivated outdoors upon the grounds of a private residence. Indoor marijuana cultivation will be allowed only as set forth in State law, which permits no more than six live marijuana plants to be planted, cultivated, harvested, dried, or processed within a single private residence or inside a fully enclosed and secured accessory structure located upon the grounds of a private residence that is fully enclosed and secured. No person shall cultivate marijuana in any manner that causes any of the following conditions:

1. Light, glare, odor, noise, or vibration that is or whose effect is either detrimental to public health, safety, or welfare or interferes with the reasonable enjoyment of life or property; or

2. Any violation of Section 17.64.120 of the Municipal Code.

e. Any marijuana cultivation that exceeds the limits set forth in this Section 4 is prohibited, is unlawful, and constitutes a public nuisance.

f. Nothing in this Ordinance or its adoption shall be deemed to affect any other prohibitions or regulations relating to marijuana in the Rancho Cucamonga Municipal Code,

including, but not limited to, Ordinance No. 897, except to the extent that State law allows cultivation of marijuana consistent with the restrictions set forth in this Ordinance. The City will not enforce those provisions of Ordinance No. 897 that prohibit the personal indoor cultivation of up to 6 live marijuana plants in a manner consistent with State law and subsections d and e above. Nothing in this Ordinance shall be deemed to affect or excuse any violation of the Rancho Cucamonga Municipal Code or of Ordinance No. 897, except as otherwise described in this Section 4.

g. Nothing in this Ordinance shall be interpreted to the effect that the City's permissive zoning scheme allows any other use not specifically listed therein.

Section 5. Public Nuisance. Any use or condition caused, or permitted to exist, in violation of any provision of this Ordinance shall be, and hereby is declared to be, a public nuisance and may be summarily abated by the City pursuant to Code of Civil Procedure Section 731 or by any other remedy available to the City.

Section 6. Penalty. Violation of any provision of this Ordinance shall constitute a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars (\$1,000) or by imprisonment for a period not to exceed six (6) months, or by both such fine and imprisonment. Each and every day such a violation exists shall constitute a separate and distinct violation of this Ordinance.

Section 7. Civil Penalties. In addition to any other enforcement permitted by this Ordinance, the City Attorney may bring a civil action for injunctive relief and civil penalties against any person or entity that violates this Interim Ordinance. In any civil action brought pursuant to this Interim Ordinance, a court of competent jurisdiction may award reasonable attorneys' fees and costs to the prevailing party.

Section 8. CEQA. It can be seen with certainty that there is no possibility that the adoption of the Interim Ordinance may have a significant effect on the environment because the Interim Ordinance will only impose greater and temporary limitations on marijuana-related uses allowed in the City, and will thereby serve to prevent potentially significant adverse environmental impacts. The City Council has reviewed staff's determination of exemption and based on its own independent judgment, concurs in staff's determination that the Interim Ordinance is exempt from CEQA. The adoption of the Interim Ordinance is therefore not subject to the California Environmental Quality Act review pursuant to Title 14, Chapter 3, Section 15061(b)(3) of the California Code of Regulations.

Section 9. Severability. If any section, subsection, subdivision, sentence, clause, phrase or portion of this Ordinance, is for any reason, held to be invalid or unconstitutional by the decision of any court of 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 adopted this Ordinance and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

Section 10. Term. This Ordinance is adopted as an urgency, interim ordinance and shall take effect immediately. This Ordinance shall expire, and the prohibition established hereby shall terminate, 45 days after the date of adoption unless extended by the City Council pursuant to California Government Code Section 65858.

Section 11. The City Clerk shall certify to the adoption of this Ordinance.

PASSED, APPROVED, AND ADOPTED this 16th day of November 2016.

AYES: Alexander, Kennedy, Spagnolo, Williams
NOES: None
ABSENT: Michael
ABSTAINED: None

For Sam Spagnolo

L. Dennis Michael, Mayor

ATTEST:

Janice C. Reynolds

Janice C. Reynolds, City Clerk

I, **JANICE C. REYNOLDS, CITY CLERK** of the City of Rancho Cucamonga, California, do hereby certify that the foregoing urgency Ordinance was adopted at a Regular Meeting of the Council of the City of Rancho Cucamonga held on the 16th day of November 2016.

Executed this 17th day of November 2016, at Rancho Cucamonga, California.

Janice C. Reynolds

Janice C. Reynolds, City Clerk

