

URGENCY ORDINANCE NO. 16-2160

**AN INTERIM URGENCY ORDINANCE OF THE CITY COUNCIL
OF THE CITY OF CUPERTINO EXTENDING A URGENCY ORDINANCE
NUMBER 16-2153 AND A TEMPORARY MORATORIUM ON NON-MEDICAL
MARIJUANA DISPENSARIES, MARIJUANA CULTIVATION AND
CULTIVATION FACILITIES, COMMERCIAL CANNABIS ACTIVITIES AND
MARIJUANA TRANSPORT AND DELIVERIES WITHIN THE CITY OF
CUPERTINO PENDING COMPLETION OF AN UPDATE TO THE CITY'S
ZONING CODE**

WHEREAS, this Ordinance is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 21000, et seq.) (CEQA) because it can be seen with certainty that there is no possibility the adoption and implementation of this Ordinance may have a significant effect on the environment, and the Ordinance is exempt from CEQA pursuant to CEQA Guidelines Sections 15061(b)(1), 15061(b)(2), and 15061(b)(3). Moreover, the adoption of this Ordinance is further exempt from CEQA because the Ordinance does not change existing City law and practice.

WHEREAS, the City Council is the decision making body on this Ordinance, and before taking action on it, using its independent judgment, finds such CEQA exemptions to apply;

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

SECTION 1. Authority. This Ordinance is adopted pursuant to the provisions set forth in Government Code sections 36937(b) and 65858(a), (b) and pursuant to other applicable law.

SECTION 2. Findings. In adopting this Ordinance, the City Council finds:

A. In 1970, Congress enacted the Controlled Substances Act (CSA) which, among other things, makes it illegal to import, manufacture, distribute, possess or use marijuana in the United States.

B. In 1972, California added Chapter 6 to the state Uniform Controlled Substances Act, commencing at Health and Safety Code section 11350, which

established the state's prohibition, penalties, and punishments for the possession, cultivation, transportation, and distribution of marijuana.

C. In 1996, the voters of the State of California approved Proposition 215 (the "Act;" Health and Safety (H&S) Code Section 11362.5).

D. On October 9, 2015, Assembly Bills 243 and 266 and Senate Bill 643 (collectively, the "Medical Marijuana Regulation and Safety Act" or "MMRSA") were enacted to create a state regulatory and licensing system governing the cultivation, testing, and distribution of medical marijuana, the manufacturing of medical marijuana products, and physician recommendations for medical marijuana. The new law also recognizes a range of medical marijuana businesses referred to as "commercial cannabis activities," including cultivation businesses, marijuana product manufacturers, marijuana distributors and transporters, marijuana testing laboratories, and dispensaries, and provides immunity to marijuana businesses operating with both a state license and a local permit.

E. The Municipal Code does not have express provisions regarding non-medical marijuana dispensaries, non-medical marijuana cultivation facilities, commercial cannabis activities, and non-marijuana deliveries. These uses are not listed as a permitted or conditionally permitted land uses in the Zoning Code and are therefore prohibited in Cupertino under principles of permissive zoning (*City of Corona v. Naulls* (2008) 166 Cal.App.4th 418, 431-433). Moreover, the Municipal Code requires compliance with the most restrictive law, which in this case is federal law, which prohibits all marijuana activity. (Cupertino Municipal Code §§1.04.010(5), 19.04.030)

F. It is imperative that the City retain local land use control over marijuana cultivation and associated uses. Several California cities and counties have experienced serious adverse impacts associated with and resulting from medical marijuana dispensaries and cultivation sites. According to these communities and according to news stories widely reported, medical marijuana activities have resulted in and/or caused an increase in crime, including burglaries, robberies, violence, and illegal sales of marijuana to, and use of marijuana by, minors and other persons without medical need in the areas immediately surrounding such medical marijuana activities. There have also been large numbers of complaints of odors related to the cultivation and storage of marijuana.

G. A California Police Chiefs Association compilation of police reports, news stories, and statistical research regarding crimes involving medical marijuana businesses and their secondary impacts on the community is contained in a 2009 white paper report which is attached to the staff report presented to the City Council on January 16, 2016, and is on file with the City Clerk, and is incorporated by reference.

H. The Santa Clara County District Attorney's Office issued a May 2014 memorandum entitled "Issues Surrounding Marijuana in Santa Clara County," which outlined many of the negative secondary effects resulting from marijuana cultivation; a copy of this memorandum is attached to the staff report presented to the City Council on January 16, 2016, and is on file with the City Clerk, and is incorporated by reference.

I. The Santa Clara County Public Defender issued a May 2014 memorandum entitled "Substance-Related Suspensions in the East Side Union High School District," describing a correlation between substance abuse-related suspensions in local high schools and a proliferation of medical marijuana dispensaries in the area; a copy of this memorandum is attached to the staff report presented to the City Council on January 16, 2016, and is on file with the City Clerk, and is incorporated by reference.

J. The Police Foundation and the Colorado Association of Chiefs of Police issued a 2015 report entitled "Colorado's Legalization of Marijuana and the Impact on Public Safety: A Practical Guide for Law Enforcement," which outlined many of the summarize the numerous challenges faced by law enforcement when enforcing the laws surrounding legalization, to document solutions that have been proposed and put into effect, and outline problems that still need to be addressed; a copy of this memorandum is attached to the staff report presented to the City Council with this ordinance and is on file with the City Clerk, and is incorporated by reference.

K. News stories regarding adverse impacts of medical marijuana businesses, including dispensaries, cultivation sites, and delivery services, are attached to the staff report presented to the City Council on January 16, 2016, and is on file with the City Clerk, and are incorporated by reference.

L. It is reasonable to conclude that non-medical marijuana dispensaries, non-medical marijuana cultivation facilities, commercial cannabis activities, and non-medical marijuana deliveries and transport would cause similar adverse impacts on the public health, safety, and welfare in Cupertino.

M. Although the state law has established a regulatory system for medical marijuana, the California Bureau of Medical Cannabis Regulation advises that it is in the early stages of developing a licensing program and will not be accepting applications for medical marijuana license until 2018.

N. In order to protect the public health, safety, and welfare, the City Council desires to amend the Municipal Code to address, in express terms, non-medical marijuana dispensaries, non-medical marijuana cultivation facilities, commercial cannabis activities, and non-medical marijuana deliveries. In the event that Proposition 64 passes, the City Council hereby determines that the Municipal Code is in need of further review and revision to protect the public against potential negative health,

safety, and welfare impacts and preserve local control over non-medical marijuana establishments. Non-medical marijuana currently is prohibited under both state and federal law, unless Proposition 64 decriminalizes non-medical marijuana at the state level.

O. Proposition 64 is on the California ballot for the November 8, 2016, election which would decriminalize under state law recreational marijuana use, cultivation, and distribution and further establish licensing program for non-medical commercial cultivation, testing, and distribution of non-medical marijuana and the manufacturing of non-medical marijuana products. However, such licenses will not be issued at least until 2018.

P. Proposition 64 expressly preserves local jurisdictions' ability to adopt and enforce local ordinances to regulate non-medical marijuana establishments including local zoning and land use requirements, business license requirements, and the ability to completely prohibit the establishment or operation of one or more types of non-medical marijuana businesses.

Q. Proposition 64 further recognizes the City's ability to completely prohibit outdoor planning, harvesting, cultivation or processing of non-medical marijuana for personal use, and the City's ability to regulate indoor cultivation for personal use.

R. The City did not take a formal position on Proposition 64, but in order to preserve local control, the City confirms that such non-medical marijuana is prohibited within the City to the fullest extent permitted by law.

S. It is necessary to extend Urgency Ordinance Number 16-2153 because it will expire before there is an opportunity for the City to evaluate state law, regulation, and licensing for non-medical marijuana for purposes of evaluating the impacts and policies for non-medical marijuana, consideration of obtaining voter approval for taxes, and adopting a regular zoning code amendment, which includes public notice, consideration by the Planning Commission, and first and second reading before the City Council.. Any loss of local land use control over marijuana cultivation would result in a current and immediate threat to the public health, safety, and welfare.

T. Government Code sections 36937 and 65858 authorize the extension of adoption of an interim urgency ordinance to protect the public health, safety, and welfare, and to prohibit land uses that may conflict with land use regulations that a city's legislative bodies are considering, studying, or intending to study within a reasonable time. Prior to this extension, the City provided notice of the public hearing as required by law.

U. Failure to adopt this extension of the moratorium could impair the orderly and effective implementation of contemplated amendments to the Municipal Code.

V. The City Council further finds that this moratorium is a matter of local and City-wide importance and is not directed towards any particular person or entity that seeks to cultivate marijuana in Cupertino.

W. The proposed Ordinance conforms with the latest adopted general plan for the City in that a prohibition against medical and non-medical marijuana cultivation facilities, medical and non-medical marijuana dispensaries, commercial cannabis activities, and medical and non-medical marijuana delivery and transport services does not conflict with any allowable uses in the land use element and does not conflict with any policies or programs in any other element of the general plan.

X. The proposed Ordinance will protect the public health, safety, and welfare and promote the orderly development of the City in that prohibiting marijuana cultivation facilities, non-medical marijuana dispensaries, commercial cannabis activities, and non-medical marijuana delivery and transport services will protect the City from the adverse impacts and negative secondary effects connected with these activities.

Y. The proposed Ordinance is consistent with Municipal Code Title 19, which currently bans marijuana cultivation facilities, non-medical marijuana dispensaries, commercial cannabis activities, and non-medical marijuana delivery services under principles of permissive zoning.

SECTION 3. Extension of Moratorium. In order to protect the public health, safety and welfare, the City finds that it is necessary to extend the Urgency Ordinance and all of the prohibitions imposed by Ordinance No. 16-2153, including those on non-medical marijuana facilities, non-medical marijuana cultivation, commercial cannabis activities, non-medical marijuana deliveries and transport within the City of Cupertino, and Ordinance No. 16-2153 is hereby extended.

SECTION 4. Effective Period. This Ordinance is an extension of Ordinance No. 16-2153, an urgency measure adopted pursuant to the provisions of Government Code Section 65858. This Ordinance shall be in effect until the earlier of the following, and shall thereupon be repealed and of no further force or effect, unless extended by subsequent enactment of the City Council:

- i) The completion of the study, evaluation, consideration, and legislative action and effective date of the amendments to Cupertino Municipal Code, Title 19, Zoning, to address non-medical marijuana uses, cultivation, and activities on a permanent basis, or
- ii) Ten months and fifteen days beyond November 15, 2016.

SECTION 5: Report of Interim Moratorium. Ten days prior to the expiration of Urgency Ordinance No. 16-2153, the City provided a report describing the measures taken to alleviate the urgency pursuant to Government Code section 65858(d). Further, 10 days prior to the expiration or any extension of this Interim Ordinance, the City Council will issue a written report describing the measures taken to alleviate the conditions which led to the adoption of this Interim Ordinance.

SECTION 6. Severability. The City Council hereby declares every section, paragraph, sentence, cause and phrase is severable. If any section, paragraph, sentence, clause or phrase of this ordinance is for any reason found to be invalid or unconstitutional, such invalidity, or unconstitutionality shall not affect the validity or constitutionality of the remaining sections, paragraphs, sentences, clauses or phrases.

SECTION 7: Publication. The City Clerk is directed to cause this ordinance to be published in the manner required by law.

THE FOREGOING EXTENSION OF THE URGENCY ORDINANCE was introduced and adopted at a regular meeting of the City Council of the City of Cupertino held on November 15, 2016, by the following vote:

<u>Vote</u>	<u>Members of the City Council</u>
AYES:	Chang, Vaidhyanathan, Paul, Sinks
NOES:	None
ABSENT:	Wong
ABSTAIN:	None

ATTEST:



Grace Schmidt, City Clerk

APPROVED:



Barry Chang, Mayor, City of Cupertino

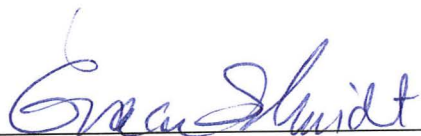
STATE OF CALIFORNIA)

COUNTY OF SANTA CLARA)

CITY OF CUPERTINO)

I, GRACE SCHMIDT, City Clerk and ex-officio Clerk of the City Council of the City of Cupertino, California, do hereby certify the attached to be a true and correct copy of Ordinance No. 16-2160, which was enacted on November 15, 2016, and that it has been published or posted pursuant to law (G.C. 40806).

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 17th day of November, 2016.



GRACE SCHMIDT, City Clerk and Ex-officio Clerk
of the City Council of the City of Cupertino, California