

ORDINANCE NO.

AN INTERIM URGENCY ORDINANCE  
PROHIBITING THE OUTDOOR CULTIVATION OF MARIJUANA  
WITHIN THE CITY OF MOUNTAIN VIEW

THE CITY COUNCIL OF THE CITY OF MOUNTAIN VIEW DOES HEREBY  
ORDAIN AS FOLLOWS:

Section 1. Chapter 36, Article III, Division 2, Sections 36.06.56 through 36.06.59, are hereby added to the Mountain View City Code to read as follows:

**“SEC. 36.06.56 - Outdoor cultivation of marijuana - Findings and purpose.**

On June 28, 2016, the California Secretary of State certified Proposition 64, the Control, Regulate, and Tax Adult Use of Marijuana Act (AUMA), for the ballot in the November 8, 2016 statewide general election. The AUMA would become law if a majority of the California electorate votes in favor of the proposition. The AUMA would regulate, among other items, the use of marijuana for personal and commercial purposes, including the recreational use of marijuana by adults twenty-one (21) years of age or older. The AUMA would also authorize cities to completely prohibit outdoor cultivation of marijuana until a determination by the California Attorney General that medical use of marijuana is lawful in the State of California under federal law. Absent appropriate local regulation authorized by the AUMA, outdoor cultivation of marijuana could occur in the city if the AUMA passes on November 9, 2016, before the city has had time to fully evaluate the impacts of this land use.

The city council, therefore, finds and declares that the outdoor cultivation of marijuana within the city poses a current and immediate threat to the public health, safety and welfare, and that without the adoption of this interim urgency ordinance, the city council will not have sufficient time to study the complex legal and practical issues surrounding the activity in order to develop an appropriate long-term regulatory solution. The city council also finds that land uses such as the outdoor cultivation of marijuana are in conflict with general plan and land-use strategies. The facts constituting the urgency for adoption of the ordinance are as follows:

a. A number of California cities have reported negative impacts of marijuana cultivation, including offensive odors, illegal sales and distribution of marijuana, trespassing, theft, and violent robberies and robbery attempts;

b. Odors from marijuana cultivation have been declared a nuisance by some cities. Marijuana plants, as they begin to flower and for a period of two (2) months or more, produce a strong odor, which can be detectable far beyond property boundaries if grown outdoors;

c. The Attorney General's August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use recognize that the cultivation 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;

d. Outdoor marijuana plants require high water consumption equivalent to six (6) gallons per day per adult plant. Such water use is inconsistent with the Water Conservation in Landscaping Regulations and General Plan Policy INC-5.5 (landscape efficiency), which limit high-water-use plants and encourage native and drought-tolerant landscapes;

e. Use of fertilizers, pesticides, herbicides, and rodenticide are common in outdoor marijuana cultivation. Further study is needed to analyze the impact of chemicals common to outdoor marijuana cultivation on sensitive habitats, uses and populations.

#### **SEC. 36.06.57 - Definitions.**

For purposes of this division, the following definitions apply:

"Cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, trimming or processing of marijuana plants, or any parts thereof.

"Fully enclosed and secure" means a space within a building or other structure which has a complete roof enclosure supported by connecting walls extending from the ground to the roof, and a foundation, slab or equivalent base to which the floor is securely attached and which is secure against unauthorized entry, and which is accessible only through one (1) or more lockable doors.

"Marijuana" means all parts of the plant *Cannabis sativa L.*, *Cannabis indica* or *Cannabis ruderalis*, 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.

"Outdoor" means any location within the city that is not inside a private residence, or inside an allowable accessory structure to a private residence located upon the

grounds of a private residence that is fully enclosed and secure, including a greenhouse or other structure on the same parcel on the same parcel of property that is not visible from a public space.

“Private residence” means a house, an apartment unit, a mobile home or other similar dwelling or allowable accessory structure.

**SEC. 36.06.58 - Imposition of moratorium.**

Notwithstanding any other provisions of this division, in accordance with the authority granted to the city under Sec. 514 of the charter of the City of Mountain View, Government Code Section 65858, and pursuant to the findings stated herein, outdoor cultivation of marijuana within the city is prohibited. It is hereby declared to be unlawful and a public nuisance for any person owning, leasing, occupying or having charge or possession of any property within any zoning district in the city to cause or allow such parcel to be used for the outdoor cultivation of marijuana for a period of forty-five (45) days following November 1, 2016, the date this ordinance was adopted by the city council.

**SEC. 36.06.59. - Enforcement.**

The city may enforce this section in any manner permitted by law. The violation of Sec. 36.06.56 through 36.06.59 shall be and is hereby declared to be a public nuisance and shall, at the discretion of the city, create a cause of action for injunctive relief. In addition, the penalties for violations set forth in Sec. 1.7 of the Mountain View City Code shall apply to violations of the provisions of this interim urgency ordinance.”

Section 2. The City Council hereby finds and determines that this interim urgency ordinance is necessary as an emergency measure, enacted pursuant to the provisions of Section 514 of the City of Mountain View Charter and pursuant to Section 65858 of the Government Code for preserving the public peace, health, safety, and general welfare of the City and the citizens of Mountain View.

Section 3. This interim urgency ordinance shall take effect immediately upon adoption by a four-fifths (4/5) (equivalent to six (6)) vote of the City Council, as provided in Section 519(d) of the City of Mountain View Charter and Government Code Section 65858. This interim urgency ordinance shall continue in effect for forty-five (45) days from the date of its adoption and shall thereafter be of no further force and effect unless, after notice pursuant to Government Code Section 65090 and a public hearing, the City Council extends this interim urgency ordinance for an additional twenty-two (22) months and fifteen (15) days pursuant to Government Code Section 65858(b).

Section 4. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the other remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional.

Section 5. This ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to Sections 15060(c)(2) of the CEQA Guidelines (Title 14, Chapter 3 of the California Code of Regulations) (the activity will not result in a direct or reasonable foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378 of the CEQA Guidelines because it has no potential for resulting in physical change to the environment, directly or indirectly).

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