

ORDINANCE NO.

AN INTERIM URGENCY ORDINANCE ADDING SECTIONS 36.06.56 THROUGH
36.06.59 TO THE MOUNTAIN VIEW CITY CODE TO PROHIBIT COMMERCIAL
CANNABIS ACTIVITY IN ALL ZONING DISTRICTS WITHIN THE CITY OF
MOUNTAIN VIEW

WHEREAS, in 1996, the voters of the State of California approved Proposition 215 (codified as Health & Safety Code Section 11362.5, *et seq.* and entitled “The Compassionate Use Act of 1996”); and

WHEREAS, 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; and

WHEREAS, on November 8, 2016, the voters of the State of California approved Proposition 64. Proposition 64, and subsequently SB 94 (the Medicinal and Adult-Use Cannabis Regulation and Safety Act or “MAUCRSA”), have decriminalized recreational cannabis use, cultivation, and distribution under State law and further established a licensing program for medical and nonmedical commercial cultivation, testing, distribution, and manufacturing. Such licenses will not be issued until January 1, 2018; and

WHEREAS, the Mountain View City Code (Chapter 36) does not have express provisions regarding commercial cannabis activity; therefore, the City Council hereby determines the City 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 commercial cannabis activity; and

WHEREAS, Proposition 64, and subsequently the MAUCRSA, expressly preserve local jurisdictions’ ability to adopt and enforce local ordinances to regulate commercial cannabis activity, including local zoning and land use requirements, business license requirements, and the ability to completely prohibit commercial cannabis or operation of one or more types of commercial cannabis activity; and

WHEREAS, it is imperative that the City retain local control over commercial cannabis activity. Several cities and counties have experienced serious adverse impacts associated with and resulting from commercial cannabis dispensaries and cultivation sites. According to these communities and according to news stories widely reported,

commercial cannabis activities have resulted in and/or caused an increase in crime and use of cannabis by minors. Consequently, the City needs time in order to study these impacts and methods to address these concerns.

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 Commercial cannabis activity - council findings and purpose.

In accordance with City Charter Section 514 and California Government Code Section 65858, the City Council finds and declares and that this Ordinance is deemed necessary for the following reasons:

a. In order to preserve local control, it is necessary to temporarily prohibit all commercial cannabis activity (including the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery, or sale of cannabis and cannabis products) within the city to the fullest extent permitted by law.

b. It is necessary to adopt this ordinance without following the procedures otherwise required prior to the adoption of a zoning ordinance as authorized by City Charter Section 514 and Government Code Section 65858 because the state will begin issuing licenses for commercial cannabis activity before there is an opportunity for the city to evaluate state law, regulation, and licensing for commercial cannabis activity. The city will evaluate impacts and develop policies for commercial cannabis, consider obtaining voter approval for taxes, and adopt an ordinance regulating commercial cannabis activity, which includes public notice, consideration by the environmental planning commission, and a first and second reading before the city council. Any loss of local land use control over commercial cannabis activity would result in a current and immediate threat to the public health, safety, and welfare.

c. Government Code Section 65858 authorizes the 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.

d. Failure to adopt this ordinance could impair the orderly and effective implementation of contemplated amendments to the city code.

e. The city council further finds that the prohibition on commercial cannabis activity imposed by this ordinance is a matter of local and citywide importance and is not directed towards any particular person or entity that seeks to operate commercial cannabis businesses in Mountain View.

f. The ordinance conforms with the general plan because a prohibition against commercial cannabis activity does not conflict with any allowable land uses or any policies of the general plan.

g. The ordinance will protect the public health, safety, and welfare and promote the orderly development of the city because prohibiting commercial cannabis activity will protect the city from the adverse impacts and negative secondary effects connected with such activity.

h. The city council hereby finds and determines that this ordinance is necessary as an urgency 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.

SEC. 36.06.58 - Imposition of moratorium.

Notwithstanding any other provisions of this division, in accordance with the authority granted to the city under City Charter Section 514, Government Code Section 65858, and pursuant to the findings stated herein, all commercial cannabis activity (including the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery, or sale of cannabis and cannabis products) within the city is prohibited in all zoning districts in the city. It is hereby declared to be unlawful and a public nuisance for any person to engage in any commercial cannabis activity within any zoning district in the city for a period of forty-five (45) days following December 5, 2016, the date this ordinance was adopted by the city council.

SEC. 36.06.59. - Enforcement.

The city may enforce the prohibition on commercial cannabis activity in any manner permitted by law. The violation of Sections 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 Section 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. The Ordinance shall take effect immediately upon adoption by a four-fifths (4/5) vote of the City Council, as provided in Section 519(d) of the City of Mountain View Charter and Government Code Section 65858. This 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 Ordinance for an additional ten (10) months and fifteen (15) days pursuant to Government Code Section 65858(b).

Section 4. Ten (10) days prior to the expiration of the Ordinance, the City will provide a report describing the measures taken to alleviate the urgency pursuant to Government Code section 65858(d).

Section 5. 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 6. This ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to Sections 15060(c)(2) of the CEQA Guidelines because the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment.

CB/7/ORD
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