

**URGENCY ORDINANCE NO. 805**

**AN INTERIM URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PACIFICA ESTABLISHING A MORATORIUM ON MARIJUANA CULTIVATION FACILITIES WITHIN THE CITY OF PACIFICA PENDING COMPLETION OF A COMPREHENSIVE UPDATE TO THE CITY OF PACIFICA ZONING REGULATIONS REGARDING MEDICAL MARIJUANA ESTABLISHMENTS.**

The City Council of the City of Pacifica does hereby ordain as follows:

SECTION 1. Authority. This Ordinance is adopted pursuant to the provisions set forth in Government Code section 65858(a) 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. California courts have held that the Act creates a limited exception from criminal liability under the state Uniform Controlled Substances Act for seriously ill persons who are in need of medical marijuana for specified medical purposes and who obtain and use medical marijuana under limited, specified circumstances.

E. On January 1, 2004, the "Medical Marijuana Program" (MMP), codified as H&S Code Sections 11362.7 to 11362.83, was enacted by the state Legislature to clarify the scope of the Act, establish a voluntary program for identification cards issued by counties for qualified patients and primary caregivers, and provide criminal immunity to qualified patients and primary caregivers for certain activities involving medical marijuana, including the collective or cooperative cultivation of medical marijuana.

F. The California Supreme Court ruled unanimously in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal.4th 729, that the Act and the MMP do not preempt local ordinances that completely and permanently ban medical marijuana dispensaries, collectives, and cooperatives.

G. In *Maral v. City of Live Oak* (2013) 221 Cal.App.4th 975, the Third District Court of Appeal held, based on *Inland Empire*, that there was no right to cultivate medical

marijuana and that a city could implement and enforce a complete ban on this activity, including a ban on personal cultivation.

H. 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.

I. While the new legislation expressly preserves local control over medical marijuana facilities and land uses, including the authority to prohibit all medical marijuana businesses and cultivation completely, newly-added Health & Safety Code section 11362.777(c)(4) provides that if a city does not have a land use regulation or ordinance regulating or prohibiting marijuana cultivation, either expressly or otherwise under principles of permissive zoning, or chooses not to administer a conditional permit program under that section, then commencing March 1, 2016, the state Department of Food and Agriculture will become the sole licensing authority for marijuana cultivation in that jurisdiction.

J. The author of AB 243, which added Health & Safety Code section 11362.777(c)(4), has stated that this preemption provision was left inadvertently in the final version of AB 243 and introduced legislation to delete subdivision (c)(4).

K. The clean-up legislation is pending, but it is not certain whether it will become effective prior to the March 1, 2016 deadline regarding marijuana cultivation, nor is it certain what the ramifications would be for a city that does not have a marijuana cultivation regulation or ordinance in place by that deadline.

L. The Municipal Code does not have express provisions regarding marijuana cultivation. It is not listed as a permitted or conditionally permitted land use in the Zoning Code and is therefore prohibited in Pacifica under principles of permissive zoning (*City of Corona v. Naulls* (2008) 166 Cal.App.4<sup>th</sup> 418, 431-433).

M. However, based on the ambiguous language of Health and Safety Code section 11362.777(c)(4), the City Council has determined that an express Municipal Code regulation regarding marijuana cultivation is necessary in order to ensure that the state does not become the sole licensing authority for marijuana cultivation within Pacifica after March 1, 2016, and to avoid unnecessary litigation with regard to the City's compliance with Health and Safety Code section 11362.777(c)(4). The new state law does not define what "sole licensing authority" would mean in this context, but it could mean that a city loses the ability to either prohibit marijuana cultivation or impose regulations upon such a land use. At a minimum, this uncertainty could result in costly litigation for the City.

N. Furthermore, the question of whether marijuana cultivation is prohibited under principles of permissive zoning is another potential source of costly litigation. In *City of Corona v. Naulls*, the issue of whether Corona's zoning code was permissive was disputed. Although the trial court and appellate court resolved the matter in favor of Corona, the city was required to present evidence on the issue.

O. It is imperative that the City retain local land use control over marijuana cultivation. 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, including cultivation sites, 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. Marijuana cultivation sites are often associated with illegal construction, unsafe electrical wiring, excessive water use, and fire hazards.

P. 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 with this ordinance and on file with the City Clerk. The report details numerous violent crimes that occurred throughout the state in and around medical marijuana establishments.

Q. 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 with this ordinance and on file with the City Clerk. According to the memorandum, marijuana cultivation sites were often associated with illegal construction, haphazard electrical wiring, electricity theft, fires, mold and fungus problems, diversion of public water, pollution of waterways, firearm violations, crimes, and organized crime and street gang involvement.

R. 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 with this ordinance and on file with the City Clerk. As detailed in these stories, marijuana establishments and cultivation sites are frequent targets of violent crimes, including robberies and assaults.

S. It is reasonable to conclude that marijuana cultivation facilities would cause similar adverse impacts on the public health, safety, and welfare in Pacifica. If the City lost the ability to regulate or prohibit marijuana cultivation as a result of Health and Safety Code section 11362.777(c)(4), it would lose the ability to protect the public health, safety, and welfare from the negative secondary impacts of marijuana cultivation sites, as detailed above.

T. In order to protect the public health, safety, and welfare, the City Council desires to amend the City of Pacifica Zoning Regulations to address, in express terms, medical marijuana dispensaries, marijuana cultivation facilities, commercial cannabis activities, and medical marijuana deliveries. The City Council hereby determines that the Municipal Code is in need of further review and possible revision to protect the public against potential negative health, safety, and welfare impacts and to address the new marijuana business models recognized under MMRSA.

U. The compacted time frame in Health and Safety Code section 11362.777(c)(4) for adopting a marijuana cultivation regulation or ordinance does not provide sufficient time to consider and adopt a regular zoning code amendment, which includes public notice, consideration by the Planning Commission, and first and second readings before the City Council. As a result of the impending March 1, 2016 deadline regarding marijuana cultivation, the potential public health, safety, and welfare consequences of not having a marijuana cultivation regulation or ordinance in place by March 1<sup>st</sup>, and the potential for unnecessary and costly litigation involving the interpretation of Health and Safety Code section 11362.777(c)(4) and its application to the City, an interim prohibition on marijuana cultivation and the issuance of any permits and/or entitlements relating to marijuana cultivation is necessary for a period of 45 days. The loss of local land use control over marijuana cultivation would result in a current and immediate threat to the public health, safety, and welfare.

V. An initial period of 45 days will permit City staff to undertake an initial investigation of these matters and recommend a course of action to the City Council.

W. 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.

X. Failure to adopt this moratorium would impair the orderly and effective implementation of contemplated amendments to the Municipal Code.

Y. 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 Pacifica.

**SECTION 3. Imposition of Temporary Moratorium.** In accordance with the authority granted the City under Government Code section 65858(a), and pursuant to the findings stated herein, the City Council hereby finds that: (1) there exists a current and immediate threat to the public health, safety, and welfare requiring this interim Urgency Ordinance; (2) this Ordinance is necessary for the immediate preservation of the public peace, health, and safety as set forth herein; and (3) hereby declares and imposes a temporary moratorium for the immediate preservation of the public health, safety and welfare as set forth below:

A. No marijuana cultivation facility may be established, operated, commenced, opened, or initiated in any zoning district in the City of Pacifica.

B. No use permit, site development permit, tentative map, parcel map, variance, grading permit, building permit, building plans, zone change, business license, or other applicable permit will be accepted, approved, or issued for the establishment of a marijuana cultivation facility.

C. As used in this Ordinance, the following definitions apply:

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

2. "Marijuana" means all parts of the plant Cannabis, 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 includes marijuana infused in foodstuff, and concentrated cannabis and the separated resin, whether crude or petrified, obtained from marijuana. It does not include 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 resin extracted therefrom), fiber, oil, or cake, or the sterilized seeds of the plant that are incapable of germination.

3. "Marijuana cultivation facility" means any business, facility, use, establishment, property, or location where the cultivation of marijuana occurs.

D. The prohibition against marijuana cultivation facilities set forth in subsection A above, however, shall not apply to a qualified patient, as defined in Health and Safety Code section 11362.7, cultivating marijuana/cannabis pursuant to Health and Safety Code section 11362.5 and the Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use promulgated by the California Attorney General under the following circumstances:

1. The qualified patient maintains no more than 6 mature or 12 immature marijuana/cannabis plants; and

2. The qualified patient cultivates marijuana/cannabis for his or her personal medical use and does not sell, distribute, donate, transmit, or provide marijuana/cannabis to any other person or entity; and

3. The property on which the qualified patient is cultivating marijuana/cannabis has no more than 100 square feet devoted to the cultivation of marijuana/cannabis by any qualified patient or combination of qualified patients (the area used to cultivate marijuana/cannabis shall be measured by the aggregate area of vegetative growth of live marijuana plants on the premises).

E. Any use or condition caused or permitted to exist in violation of any of the provisions of this Ordinance shall be and is hereby declared a public nuisance and may be abated by the City pursuant to the procedures set forth in this Code.

SECTION 4. Effective Date and Duration. Pursuant to Government Code section 65858(a), this Ordinance shall take effect immediately but shall be of no further force and effect 45 days from its date of adoption unless the City Council, after notice and public hearing as provided under Government Code section 65858(a) and adoption of the findings required by Government Code section 65858(c), subsequently extends this Ordinance.

SECTION 5. Report of Interim Moratorium. Pursuant to Government Code section 65858(d), 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.

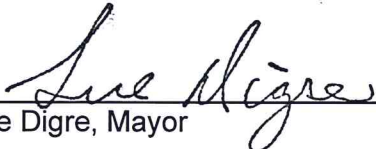
SECTION 6. Compliance with CEQA. The City Council hereby finds that this Ordinance is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 21000, et seq.) (CEQA) because the City Council hereby finds that it can be seen with certainty that there is no 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.

SECTION 7. 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 8: Publication. The City Clerk is directed to cause this ordinance to be published in the manner required by law.

**THE FOREGOING URGENCY ORDINANCE** was introduced and adopted at a regular meeting of the City Council of the City of Pacifica held on January 11, 2016, by the following vote:

AYES,	Keener, Nihart, Ervin, O'Neill, Digre
NOES,	None.
ABSTAIN,	None.
ABSENT,	None.


  
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Sue Digre, Mayor

**ATTEST:**

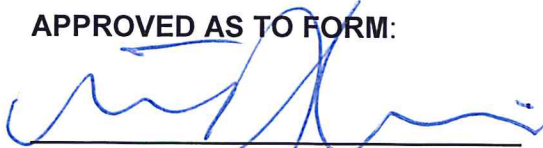
CITY OF PACIFICA

I, KATHY O'CONNELL, CITY CLERK of the City of Pacifica, California, do hereby certify that the foregoing Urgency Ordinance was duly adopted and passed at a regular meeting of the City Council on the 11th day of January, 2016

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Kathy O'Connell, City Clerk

**APPROVED AS TO FORM:**

  
Matthew Visick, Acting City Attorney