

ORDINANCE NO. 16-15

EXTENDING AN INTERIM ORDINANCE OF THE CITY COUNCIL OF THE CITY OF EL CENTRO REGULATING PERSONAL INDOOR CULTIVATION OF MARIJUANA, BANNING OUTDOOR PERSONAL CULTIVATION AND BANNING MARIJUANA USE IN CITY FACILITIES AND DECLARING THE URGENCY THEREOF

The City Council of the City El Centro hereby does ordain as follows:

SECTION 1. FINDINGS

In light of Proposition 64 (also known as the Control, Regulate, and Tax Adult Use of Marijuana Act ("AUMA")) on the November 8, 2016 statewide general election, the purpose of this Ordinance is to adopt an urgency land use ordinance under the authority set out in Govt. Code Section 65858 in order to regulate personal indoor cultivation of marijuana and ban outdoor cultivation, but only in the event said Proposition passes at said general election and subject to its provisions.

The City Council finds that this urgency ordinance is necessary for the protection of public health safety and welfare and that there is a current and immediate threat to the public health, safety, or welfare that will arise from the approval of Proposition 64, the Adult Use of Marijuana Act without appropriate regulation from the personal indoor cultivation of marijuana plants and a ban on personal outdoor cultivation. This urgency ordinance is not related to the construction development of multifamily housing.

This ordinance is not related to the regulation or prohibition of medical marijuana cultivation or sale.

The City Council finds that significant health, safety and welfare issues as associated with marijuana use, sale and cultivation, some of which has been derived from experience with medical marijuana, is as follows:

(a) In 1970, Congress enacted the Controlled Substances Act ("CSA") (21 U.S.C. Section 801 et seq.) that, among other things, makes it illegal to import, manufacture, distribute, possess, or use marijuana for any purpose in the United States and further provides criminal penalties for marijuana use.

(b) Marijuana still is listed as a federal Schedule 1 drug under the CSA. As a Schedule 1 drug, the CSA provides that the manufacture, cultivation, distribution, and dispensing of marijuana is illegal for any purpose, and establishes criminal penalties for marijuana use.

(c) On November 5, 1996, the voters of the State of California approved Proposition 215, codified as Health and Safety Code Section 11362.5 et seq. and entitled "The Compassionate Use Act of 1996" ("CUA"). The express intent of Proposition 215 was to enable persons who are in need of medical marijuana for specified medical purposes to obtain and use it under limited, specified circumstances.

(d) The California Legislature adopted Senate Bill 420, effective January 1, 2004, adding Article 2.5, "Medical Marijuana Program," to Division 10 of the California Health and Safety Code §11362.7 et seq. ("Medical Marijuana Program Act" or "MMPA"). The MMPA created a state-approved medical marijuana identification card program and provided certain additional immunities from state marijuana laws.

(e) On August 25, 2008, then California Attorney General Edmund G. Brown issued "Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use" ("Guidelines"). These Guidelines were intended to clarify the state's laws governing medical marijuana and provide clear guidance for patients and law enforcement to ensure that medical marijuana is not diverted to illicit markets. However, as reflected by the acknowledgement of the current Attorney General, Kamala Harris, these guidelines have proven to be inadequate and require revision to prevent continued abuses.

(f) In April 2009, the California Police Chiefs Association issued a "White Paper" which explains that throughout California, many violent crimes have been committed that can be traced back to the proliferation of marijuana dispensaries, including armed robberies and murders. Increased noise and pedestrian traffic, including nonresidents in pursuit of marijuana and out of area criminals in search of prey, are commonly encountered just outside marijuana dispensaries. The City Council hereby finds the report contains persuasive anecdotal and documentary evidence that both storefront and mobile medical marijuana dispensaries pose a threat to public health, safety and welfare, and therefore this report, which is part of the record before the City in this matter, is hereby incorporated into the City Council's findings in this ordinance.

(g) Other California cities that have permitted the establishment of medical marijuana dispensaries have experienced an increase in crime, such as burglary, robbery, and assaults; the distribution of tainted marijuana; the sale of illegal drugs in the areas immediately surrounding such medical marijuana dispensaries, collectives and cooperatives; the unavoidable exposure of school-age children and other sensitive residents to medical marijuana; fraud in issuing, obtaining, or using medical marijuana recommendations; and the diversion of marijuana for non-medical and recreational uses.

(h) Concerns about non-medical marijuana use in connection with medical marijuana distribution operations have been recognized by federal and state courts. One example is *People v. Leal*, 210 Cal.App.4th 829 (2012):

"Not surprisingly, it seems that the enhanced protection from arrest has proven irresistible to those illegally trafficking marijuana, for if there is even rough accuracy in the anecdotal estimate by the arresting detective in this case - that nearly 90 percent of those arrested for marijuana sales possess either a CUA recommendation or a card - then there is

obviously widespread abuse of the CUA and the MMP identification card scheme by illicit sellers of marijuana. Ninety percent far exceeds the proportion of legitimate medical marijuana users one would expect to find in the populace at large. For this and other reasons, it is impossible for us not to recognize that many citizens, judges undoubtedly among them, believe the CUA has become a charade enabling the use of marijuana much more commonly for recreational than for genuine medical uses."

(i) A May 27, 2013 study published in the Journal of the American Medical Association Pediatrics showed that, as marijuana appears in an increasing number of homes, so too does evidence of accidental ingestion of marijuana and marijuana-infused food by young children. According to the study, more children appear to access marijuana-laced brownies, cookies and beverages sold through marijuana dispensaries, leading to increased emergency room visits. These children often suffer anxiety attacks when they start to feel unexpected symptoms of being under the influence: hallucinations, dizziness, altered perception, and impaired thinking. In addition, the study found that ingestion of highly potent marijuana by young children can suppress respiration and even induce coma.

(j) Successful enforcement actions involving storefront dispensaries have coincided with an increase in mobile marijuana dispensaries. In parts of the state, shuttered marijuana dispensaries have converted their operations to mobile delivery services. An attorney in the region is also advising his marijuana dispensary clients to change their business model to distribution from a mobile source to avoid bans on storefront enterprises.

(k) Mobile medical marijuana dispensaries have been associated with criminal activity. Delivery drivers, for example, have been targets of armed robbers who seek cash and drugs. As a result, many of the drivers for medical marijuana dispensaries reportedly carry weapons or have armed guards as protection. Examples of such criminal activity reported in the media include the following, each of which the City Council finds contain persuasive, documented evidence that mobile medical marijuana dispensaries and deliveries pose a threat to public health, safety and welfare.

1. A West Covina deliveryman was reportedly robbed after making a delivery. The deliveryman told police that he was approached by two subjects in ninja costumes who chased him with batons and took the marijuana and money he was carrying.
2. A Temecula deliveryman was reportedly robbed of cash outside of a restaurant, which led to a vehicular chase that continued until the robbers' vehicle eventually crashed on a freeway on-ramp.
3. Marijuana deliverymen in Imperial Beach were reportedly robbed after being stopped by assailants (one with a semiautomatic handgun) after making a stop.

4. A deliveryman was reportedly robbed of three ounces of marijuana while making a delivery outside a restaurant in Riverside, and he told police that the suspect may have had a gun.

5. A deliverywoman in La Mesa was reportedly shot in the face with a pellet gun by assailants who subsequently carjacked her vehicle.

6. A marijuana delivery from a Los Angeles mobile marijuana dispensary turned deadly in Orange County when four individuals reportedly ambushed the dispensary driver and his armed security guard and tried to rob them. One of the suspects approached the delivery vehicle and confronted the driver and a struggle ensued. A second suspect armed with a handgun, approached the security guard, who fired as the suspect hitting him multiple times.

7. A deliveryman was reportedly robbed of \$20,000 worth of marijuana (approximately 9 pounds) and a cellular phone in Fullerton, and suffered a head injury during the crime.

(l) Since the approval of recreational marijuana use, Colorado has had a 500% increase in citations for driving intoxicated or smoking in public places.

(m) The provisions of Proposed Proposition 64 on the November 2016 ballot reserve to cities the ability to regulate personal marijuana cultivation of no more than six mature plants, outdoor cultivation as well as cultivation and sale.

(n) Having reviewed the new laws, the City Council continues to believe that there is a high likelihood that personal marijuana cultivation above that allowed by law poses a significant risk of harm, including fires resulting from indoor growth in homes, odors, building code and related violations.

(o) Absent this ordinance, personal cultivation both indoors and outdoors will be regulated only by state law, and may increase in the City without the adoption of this ordinance. The City does not wish to cede to the state its authority to regulate indoor personal marijuana cultivation or to prohibit personal outdoor cultivation, and, for all these reasons, finds that this ordinance is necessary to preserve the public peace, health and/or safety.

(p) Nothing herein is intended to prevent the legal use of medical cannabis, by patients or caregivers pursuant to the Compassionate Care Act, as that may be amended from time to time.

(q) The Council further has determined that this interim ordinance is necessary to determine the results of the November 8 general election and to review and study implementations of the provisions of Proposition 64 if it passes at that election.

(r) Therefore, this interim urgency ordinance is adopted pursuant to the authority granted by the California Constitution and State law, including but not limited to Article XI, Section 7 of the California Constitution and Govt. Code Section 65858.

(s) The adoption of this ordinance is exempt from CEQA as it does not have any significant impact on the environment as it simply continues existing provisions of the City Code as to restrictions on marijuana cultivation.

SECTION 2 - INDOOR MARIJUANA CULTIVATION

A. Purpose and Intent.

The City Council finds as follows:

1. Purpose. The purpose and intent of this ordinance is to regulate the cultivation of marijuana in a manner that protects the health, safety and welfare of the community consistent with Proposition 64, also known as the Control, Regulate, and Tax Adult Use of Marijuana Act ("AUMA"). This Chapter is not intended to interfere with a patient's right to medical marijuana, as provided for in California Health & Safety Code Section 11362.5, nor does it criminalize medical marijuana possession or cultivation by specifically defined classifications of persons, pursuant to state law. This Chapter is not intended to give any person unfettered legal authority to grow marijuana; it is intended simply to impose zoning restrictions on the personal indoor cultivation of marijuana permitted under AUMA when it is authorized by California state law for medical or other lawful purposes under the state law.

2. Applicability. As set out in El Centro City Code Chapter 9.03, and authorized by AB 243 (Section 11362.777 of the Health and Safety Code), marijuana cultivation remains prohibited in all zones and districts of the City until and unless AUMA is passed at the November 8, 2016 statewide general election. Upon the passage of AUMA at said election, the cultivation of non-medical marijuana in the City shall be controlled and regulated by the provisions of this Ordinance that is an uncodified portion of the Zoning Code.

3. Non-conflicting enactment. No part of this Chapter shall be deemed to conflict with federal law as contained in the Controlled Substances Act, 21 U.S.C. §§ 800 et seq., nor to otherwise permit any activity that is prohibited under that Act or any other local, state or federal law, statute, rule or regulation.

B. Definitions.

As used herein the following definitions shall apply:

1. "Authorized Grower" means a person 21 years and older who is authorized by, and in compliance with, federal or state law to cultivate marijuana indoors for personal use. There may be only one authorized grower per private residence who can present written

evidence that any other persons in that private residence have authorized him/her to obtain the permit referenced herein.

“City” means the City of El Centro.

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

4. "Fully enclosed and secure structure" means a fully-enclosed space within a building that complies with the California Building Code ("CBSC"), as adopted in the City, or if exempt from the permit requirements of the CBSC, that has a complete roof, a foundation, slab or equivalent base to which the floor is secured by bolts or similar attachments, is secure against unauthorized entry, is accessible only through one or more lockable doors, and is not visible from a public right-of-way. Walls and roofs must be constructed of solid materials that cannot be easily broken through such as two inch by four inch nominal or thicker studs overlaid with three-eighths inch or thicker plywood or the equivalent. Plastic sheeting, regardless of gauge, or similar products do not satisfy this requirement. If indoor grow lights or air filtration systems are used, they must comply with the California building, electrical, and fire codes as adopted in the City of El Centro.

5. "Immature marijuana plant" means a marijuana plant, whether male or female, that has not yet flowered and which does not yet have buds that are readily observed by unaided visual examination.

6. "Indoors" means within a fully enclosed and secure structure as that structure is defined above.

7. "Mature marijuana plant" means a marijuana plant, whether male or female, that has flowered and which has buds that are readily observed by unaided visual examination.

8. "Outdoors" means any location within the City that is not within a fully enclosed and secure structure.

9. "Parcel" means property assigned a separate parcel number by the Imperial County assessor.

10. "Private residence" means a house, apartment unit, mobile home, or other similar dwelling unit. A second unit does not constitute a “private residence.”

C. Outdoor Cultivation.

It is hereby declared to be unlawful, a public nuisance, and a violation of this Ordinance for any person owning, leasing, occupying, or having charge or possession of any parcel within any zoning district in the City to cause or allow such premises to be used

for the outdoor cultivation of marijuana plants.

D. Indoor Cultivation of Marijuana Only for Personal Use; Regulations for Residential Zones.

1. When authorized by state law, an authorized grower shall be allowed to cultivate marijuana only in a private residence in a residential zone, only indoors, and only for personal use, subject to the following regulations:

2. The marijuana cultivation area shall be located indoors. The total area cultivated shall not exceed fifty square feet and not exceed ten feet in height, nor shall it come within twelve (12) inches of the ceiling or any cultivation lighting. Cultivation in a greenhouse on the property of the residence but not physically part of the home is permitted, as long as it is fully enclosed, secure, not visible from a public right-of-way and meeting all requirements in this Chapter.

3. Marijuana cultivation lighting shall not exceed one thousand two hundred watts in total for the total cultivation area within the residence.

4. The use of gas products such as but not limited to CO₂, butane, methane, or any other flammable or non-flammable gas for marijuana cultivation or processing is prohibited.

5. There shall be no exterior visibility or evidence of marijuana cultivation outside the private residence from the public right-of-way, including but not limited to any marijuana plants, equipment used in the growing and cultivation operation, and any light emanating from cultivation lighting.

6. The authorized grower shall reside full-time in the residence where the marijuana cultivation occurs. It is the responsibility of the authorized grower to insure that marijuana cultivated hereunder is not accessed by persons under 21.

7. The authorized grower shall not participate in marijuana cultivation in any other location within the City. There may be only one authorized grower per private residence.

8. The residence shall include fully functional and usable kitchen, bathroom, and bedroom areas actually utilized for their intended use by the resident authorized grower, and the premises shall not be used primarily or exclusively for marijuana cultivation.

9. The marijuana cultivation area shall be in compliance with the current adopted edition of the California Building Code § 1203.4 Natural Ventilation or § 402.3 Mechanical Ventilation (or equivalent), as amended from time to time.

10. The building official may require additional specific standards to meet the California Building Code and Fire Code, including but not limited to installation of fire suppression sprinklers and may require annual or other inspections.

11. The marijuana cultivation area shall not result in a nuisance or adversely affect the health, welfare, or safety of the resident or nearby residents by creating dust, glare, heat, noise, noxious gasses, odors, smoke, traffic, vibration, or other impacts, or be hazardous due to use or storage of materials, processes, products or wastes.

12. No more than 6 living marijuana plants, mature or immature, are permitted for indoor personal cultivation under this Chapter.

13. Marijuana in excess of 28.5 grams produced by plants kept for indoor personal cultivation under this Chapter must be kept in a locked space on the grounds of the private residence not visible from the public right-of-way.

E. Indoor Cultivation of Marijuana Restricted to One Authorized Grower per Private Residence.

1. It is hereby declared to be unlawful, a public nuisance and a violation of this Chapter for any person owning, leasing, occupying, or having charge or possession of any parcel within the City to cause or allow such parcel to be used for the cultivation of marijuana, unless the person is authorized by state law to grow marijuana for a specifically authorized purpose within a private residence in a residential zone, and such authorized grower is complying with all requirements of this Ordinance.

F. Permit Required for Indoor Cultivation of Personal Nonmedical Marijuana.

1. No person shall grow marijuana upon any parcel until and unless he or she first secures a permit from the community development department.

2. Any person desiring to obtain a permit for indoor cultivation of marijuana shall obtain a Indoor Cultivation Permit Application from the community development department. Prior to submitting such application a nonrefundable fee, as established by resolution of the City Council, shall be paid to the City to defray, in part, the cost of the City investigation and report set out in this Ordinance. After any time after an application permit has been filed with the Community Development Department, there may be an investigation made by the community development director, or their respective designee.

3. Each applicant for an Indoor Cultivation Permit shall furnish the following information: full name of property owner, address at which indoor cultivation is to occur, the full and true name of the applicant who is also the authorized grower, a telephone number at which applicant may be contacted, a statement attesting the applicant will be complying with the regulations established by this ordinance, a statement that the applicant is the sole authorized grower for that property, and a consent allowing City staff to enter the

premises for an inspection.

4. When any change occurs regarding the written information required by this subsection, prior to or after issuance of the permit, the applicant shall give written notification of such change to the Community Development Director within two weeks of such change.

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6. Nothing in this section precludes the City from inspecting and re-inspecting the personal indoor cultivation site if it is determined that such inspection or re-inspections are necessary to ensure the health and welfare of the public.

7. Only one such permit shall be granted per residence and that permit shall be issued only to the authorized grower. The permit may be granted by administrative action of the Community Development Director when the application and any inspection verify that the applicant has and will meet the requirements of this Ordinance.

8. Any permit issue may be revoked pursuant to the provisions of Chapter 18, Article IV of the El Centro City Code.

9. The Community Development Director may issue administrative guidelines to assist in the efficient issuance and administration of permits.

G. Public Nuisance 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 parcel within the City to create a public nuisance in the course of cultivating indoor marijuana plants. A public nuisance may be deemed to exist, if such activity produces:

1. Odors which are disturbing to people of reasonable sensitivity residing or present on adjacent or nearby property or areas open to the public.

Repeated responses to the parcel by law enforcement or fire personnel.

3. A repeated disruption to the free passage of persons or vehicles in the neighborhood, excessive noise which is disturbing to people of normal sensitivity on adjacent or nearby property or areas open to the public.

4. Any other impacts on the neighborhood which are disruptive of normal activity in the area including, but not limited to, grow lighting visible outside the dwelling, excessive vehicular traffic or parking occurring at or near the dwelling, and excessive noise emanating from the dwelling.

5. Any personal cultivation of marijuana in violation of this Ordinance.

H. Penalties Not Exclusive; Violation Constitutes a Crime.

The remedies and penalties provided herein are cumulative, alternative and nonexclusive. The use of one does not prevent the use of any other criminal, civil, or administrative remedy or penalty authorized by, or set forth in, the El Centro Municipal Code. None of the penalties or remedies authorized by, or set forth in, the El Centro Municipal Code shall prevent the City from using any other penalty or remedy under state statute which may be available to enforce this section or to abate a public nuisance. Violation of this Chapter shall constitute a crime punishable as a misdemeanor or infraction in the discretion of the City Attorney.

I. Sunset Clause.

1. The provisions of this Ordinance shall automatically sunset and have no force of effect in the event AUMA fails to pass at the November 8, 2016 statewide general election.

2. In the event AUMA fails to pass at the November 8, 2016 statewide general election, marijuana cultivation whether indoors or outdoors, shall be prohibited in all zones and districts of the City of El Centro as authorized by AB 243 (Section 11362.777 of the Health and Safety Code and El Centro City Code Chapter 9.03).

J. Prohibition on Possession and Smoking of Marijuana in City Buildings

The possession, smoking or other use of marijuana is prohibited in buildings owned, leased or occupied by the City. As an employer, the City maintains a drug and alcohol free workplace by prohibiting the use, consumption, possession, transfer, transportation, sale, display and growth of marijuana in the workplace. As provided by state law, where a tobacco smoking ban or regulation (whether public, private or pursuant to state law) is in place, such ban or regulation applies to the smoking of marijuana.

SECTION 3 - SCOPE

Except as set forth in this ordinance, all other provisions of the El Centro City Code shall remain in full force and effect.

SECTION 4 - SEVERABILITY

If any section, subsection, 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, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more sections, subsections, clauses, phrases or portions be declared invalid or unconstitutional.

SECTION 5 - EFFECTIVE DATE

This Ordinance shall become effective immediately upon adoption and shall terminate and be of no force and effect 10 months and 15 days after that date, unless otherwise extended by action of the City Council pursuant to Govt. Code Section 65858.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of El Centro, California, held on the 20th day of Dec., 2016.

CITY OF EL CENTRO

By: _____
Alex Cardenas, Mayor

ATTEST:

By: _____
L. Diane Caldwell, City Clerk

APPROVED AS TO FORM:
Office of the City Attorney

By: _____
Elizabeth L. Martyn, City Attorney

STATE OF CALIFORNIA)
COUNTY OF IMPERIAL) ss
CITY OF EL CENTRO)

I, L. Diane Caldwell, City Clerk of the City of El Centro, California, do hereby certify that the foregoing Ordinance No. 16-15 was duly and regularly adopted at a regular meeting of the City Council of the City of El Centro, California, held on the 20th day of Dec., 2016, by the following vote:

AYES:	Jackson, Silva, Cardenas, Viegas-Walker
NOES:	None
ABSENT:	Garcia
ABSTAINED:	None

By: _____
L. Diane Caldwell, City Clerk