

URGENCY ORDINANCE NO. U-1658

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN FERNANDO PROHIBITING OUTDOOR PERSONAL MARIJUANA CULTIVATION AND ESTABLISHING REGULATIONS AND A PERMITTING PROCESS FOR THE INDOOR PERSONAL CULTIVATION OF MARIJUANA AND DECLARING THE URGENCY THEREOF IN ACCORDANCE WITH GOVERNMENT CODE SECTIONS 36934 AND 36937, SUBJECT TO CALIFORNIA VOTER APPROVAL OF PROPOSITION 64 AT THE TUESDAY, NOVEMBER 8, 2016 ELECTION

WHEREAS, in 1996, the California Legislature approved Proposition 215, also known as the Compassionate Use Act (the “CUA”), which was codified under Health and Safety Code Section 11262.5 et seq. and was intended to enable persons who are in need of medical marijuana for specified medical purposes, such as cancer, anorexia, AIDS, chronic pain, glaucoma and arthritis, to obtain and use marijuana under limited circumstances and where recommended by a physician; and

WHEREAS, the CUA provides that “nothing in this section shall be construed or supersede legislation prohibiting persons from engaging in conduct that endangers others, or to condone the diversion of marijuana for non-medical purposes”; and

WHEREAS, in 2004, the California Legislature enacted the Medical Marijuana Program Act (Health & Saf. Code, § 11362.7 et seq.)(the “MMP”), which clarified the scope of the CUA, created a state-approved voluntary medical marijuana identification card program, and authorized cities to adopt and enforce rules and regulations consistent with the MMP; and

WHEREAS, Assembly Bill 2650 (2010) and Assembly Bill 1300 (2011) amended the MMP to expressly recognize the authority of counties and cities to “[a]dopt local ordinances that regulate the location, operation, or establishment of a medical marijuana cooperative or collective” and to civilly and criminally enforce such ordinances; and

WHEREAS, California courts have found that neither the CUA nor the MMP provide medical marijuana patients with an unfettered right to obtain, cultivate, or dispense marijuana for medical purposes; and

WHEREAS, in 2013, the California Supreme Court in the case of *City of Riverside v. Inland Empire Patients Health and Wellness Center* (2013) 56 Cal.4th 729, found the CUA and MMP do not preempt a city’s local regulatory authority and confirmed a city’s ability to prohibit medical marijuana dispensaries within its boundaries; and

WHEREAS, in 2013, the California Third District Appellate Court held that state law does “not preempt a city’s police power to prohibit the cultivation of all marijuana within the city”; and

WHEREAS, in September 2015, the California State Legislature enacted, and Governor Brown signed into law three bills – Assembly Bill 243, Assembly Bill 266, and Senate Bill 643 – which together comprise the Medical Marijuana Regulation and Safety Act (the “MMRSA”); and

WHEREAS, the MMRSA creates a comprehensive dual state licensing system for the cultivation, manufacture, retail, sale, transport, distribution, delivery, and testing of medical cannabis; and

WHEREAS, the MMRSA contains new statutory provisions that:

- Allow local government to enact ordinances expressing of their intent to prohibit the cultivation of marijuana and not administer a conditional use permit program pursuant to Health and Safety Code Section 11362.777 for the cultivation of marijuana (Health & Saf. Code, § 11362.777(c)(4));
- Expressly provide that the Act does not supersede or limit local authority for local law enforcement activity, enforcement of local ordinances, or enforcement of local permit or licensing requirements regarding marijuana (Bus. & Prof. Code, § 19315(a));
- Expressly provide that the Act does not limit the authority or remedies of a local government under any provision of law regarding marijuana, including, but not limited to, a local government’s right to make and enforce within its limits all police regulations not in conflict with its general laws (Bus. & Prof. Code, § 19316(c));
- Require a local government that wishes to prevent marijuana delivery activity (as defined in Business and Professions Code Section 19300.5(m)) from operating within the local government’s boundaries to enact an ordinance affirmatively banning such delivery activity (Bus. & Prof. Code, § 19340(a)); and

WHEREAS, on May 16, 2016, the City Council adopted Ordinance No. 1654 to ban “commercial cannabis activities,” as defined under the MCRSA, with the exception of certain commercial cannabis deliveries to locations within the City of San Fernando provided such deliveries originate from legal marijuana dispensaries located outside the territorial boundaries of the City of San Fernando; and

WHEREAS, Ordinance No. 1654 bars cannabis delivery operations headquartered in, or otherwise originating from the City of San Fernando; and

WHEREAS, the MMRSA was renamed the Medical Cannabis Regulation and Safety Act (the “MCRSA”) under Senate Bill 837 in June 2016, which also made includes substantive changes to the applicable state laws, which affect the various state agencies involved in regulating cannabis businesses as well as potential licensees; and

WHEREAS, on November 8, 2016, the Control, Regulate, and Tax Adult Use of Marijuana Act (“AUMA”) will come before California voters as Proposition 64; and

WHEREAS, if approved, Proposition 64 would legalize the nonmedical use of marijuana by persons 21 years of age and over, and the personal cultivation of up to six marijuana plants; and

WHEREAS, if approved, Proposition 64 would additionally create a state regulatory and licensing system governing the commercial cultivation, testing, and distribution of nonmedical marijuana, and the manufacturing of nonmedical marijuana products; and,

WHEREAS, Proposition 64 is a state statute initiative that, if approved, would become effective on November 9, 2016, the day after the November 8, 2016 election, pursuant to the California Constitution (Cal. Const., art. II, § 10(a)); and

WHEREAS, pursuant to Proposition 64, local governments, including cities, can reasonably regulate, but cannot ban, personal indoor cultivation of up to six living marijuana plants within the person's private residence, including indoor cultivation in a greenhouse on the same property as the residence that is not physically part of the home (Health & Saf. Code, §§ 11362.1(a), 11362.2(a)-(b)); and

WHEREAS, Proposition 64 defines a private residence as "a house, an apartment unit, a mobile home, or other similar dwelling unit) and allows persons to possess the marijuana produced by their six cultivated plants (Health & Saf. Code, § 11362.2(b)(5)); and

WHEREAS, Proposition 64 enables local governments, including cities, to regulate and/or ban, the personal cultivation of up to six living marijuana plants outdoors upon the grounds of a private residence (Health & Saf. Code, § 11362.2(b)(3)); and

WHEREAS, Proposition 64 requires that any and all living marijuana plants personally cultivated by persons be kept: (1) within the person's private residence or upon the grounds of that private residence (e.g. in an outdoor garden area); (2) in a locked space; and (3) not visible by normal unaided vision from a public place (Health & Saf. Code, § 11362.2(a)(2)); and

WHEREAS, the City of San Fernando (the "City") seeks to prohibit the outdoor personal cultivation of marijuana and establish standards and a permitting process for indoor personal marijuana cultivation if Proposition 64 is approved.

WHEREAS, Government Code sections 36934 and 36937 authorize the City Council to adopt an urgency ordinance for the immediate preservation of the public peace, health, or safety.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SAN FERNANDO, CALIFORNIA DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. The facts set forth in the recitals above are true and correct.

SECTION 2. Definitions.

- A. "Marijuana" means all parts of the plant *Cannabis sativa* L., 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.
- B. "Cultivate" means participation any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of marijuana.

- C. “Private residence” means a house, an apartment unit, a mobilehome, or other similar dwelling.

SECTION 3. Urgency Findings.

- A. The Attorney General's August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use recognizes that certain marijuana related activities can create adverse impacts absent reasonable regulations to address these impacts.
- B. If approved by California voters on November 8, 2016, Proposition 64 would allow individuals to possess, plant, cultivate, harvest, dry, or process not more than six living marijuana plants and possess the marijuana produced by the plants, subject to local government regulations as to indoor personal cultivation and/or local government regulations or bans as to personal marijuana cultivation outdoors upon the grounds of a private residence.
- C. The strong smell of marijuana creates an attractive nuisance, alerting persons to the location of the valuable plants, and creating a risk of trespass and burglary. The allowance of unfettered personal marijuana cultivation would therefore be detrimental to the immediate preservation of the public peace, health, and safety in the City.
- D. This Urgency Ordinance would help minimize the creation of attractive nuisances from personal marijuana cultivation and contribute to the preservation of the public peace, health, and safety of the City.

SECTION 4. Chapter 42 (Health and Sanitation) of the San Fernando Municipal Code is amended by the addition of Article III (Marijuana Cultivation) which shall read as follows:

Article III. – Marijuana Cultivation

Sec. 42-90 Indoor Personal Marijuana Cultivation Permit Required.

Sec. 42-91 Standards for Indoor Personal Marijuana Cultivation.

Sec. 42-92 Outdoor Personal Cultivation of Marijuana Prohibited.

Sec. 42-90 Indoor Personal Marijuana Cultivation Permit Required.

- (a) No indoor personal cultivation, as authorized under Health and Safety Code Section 11362.1(a)(3), shall be conducted in the City without a valid City-issued Indoor Personal Marijuana Cultivation Permit pursuant to Health and Safety Code Section 11362.2(b)(1).

- (b) The form of the application for an Indoor Personal Cannabis Cultivation Permit shall be approved by the Chief Planning Official, Chief of Police, and City Attorney.
- (c) If a residence proposed to be utilized in any manner for indoor and/or outdoor cultivation is leased or rented, then an Indoor Personal Marijuana Cultivation Permit may only be issued upon a written authorization from the owner of such property that explicitly allows such cultivation, with written authorization including proof of notary on form provided by the City of San Fernando. Such written authorization shall accompany an application for an Indoor Personal Marijuana Cultivation Permit. The property owner may revoke such authorization by providing written notice of revocation to the City and to the permittee. Thirty (30) calendar days after receipt of such notice by the City, the relevant Indoor Personal Marijuana Cultivation Permit shall be null and void.
- (d) Applications shall be filed with the City Clerk and accompanied by an application (including inspection) fee and any other required site plans or documentation, as established by City Council resolution.
- (e) The Chief Planning Official and Chief of Police, or designee(s), shall consider and either approve or disapprove an application for an Indoor Personal Marijuana Cultivation Permit and deliver written notice of such approval or disapproval by first class mail to the applicant within thirty (30) calendar days of the City's receipt of such complete application.
- (f) Appeal of Permit Denial. A denial of an Indoor Personal Marijuana Cultivation Permit may be made in accordance with the procedural protocol set forth in San Fernando Municipal Code Section 106-76 et seq. for appeals of certain zoning-related determinations, which provide for aggrieved parties to appeal to the Planning Commission and City Council, if necessary.
- (g) Periodic Inspections. Permittees who possess current and valid Indoor Personal Marijuana Cultivation Permits shall be subject to quarterly City inspections to ensure compliance with the standards set forth in this Article III of Chapter 42 upon at least seventy-two (72) hours written notice from the City.

Sec. 42-91 Standards for Indoor Personal Marijuana Cultivation.

- (a) Indoor personal marijuana cultivation shall be limited to the inside of a private residence or inside an accessory structure to a private residence located upon the grounds of a private residence that is fully enclosed and secure, pursuant to Health and Safety Code Section 11362.1 and 11362.2, so long as the portion of the residence or eligible accessory structure utilized for such cultivation is not within a required walkway or common open space area and does not reduce the amount of required on-site parking spaces applicable to the relevant residence(s).
- (b) Any and all live marijuana plants cultivated indoors by persons in the City pursuant to Health and Safety Code Section 11362.1(a)(3) shall be kept in a locked space that is

not visible by normal unaided vision from a public place, subject to any and all limitations applicable under Health and Safety Code Sections 11362.1 and 11362.2.

- (c) All structures in which such indoor personal cannabis cultivation occurs shall comply with all applicable zoning, building, housing, and fire code requirements.
- (d) The use of grow lights, fans, ventilation devices or any other electrical, irrigation, or mechanical equipment shall comply with all applicable building, housing, and fire code requirements and related permitting and inspection requirements.
- (e) Indoor grow lights shall not exceed 2,000 watts total illumination, and the installation, wiring, and operation of such lighting shall comply with the applicable building, housing, and fire code requirements and related permitting and inspection protocols.
- (f) The use of gas products (CO₂, butane, propane, natural gas, etc.) or generators for personal indoor marijuana cultivation shall be prohibited.
- (g) Any structure utilized for personal indoor marijuana cultivation shall have ventilation and filtration systems installed to prevent the odor of cannabis from escaping the interiors of such structure and the accumulation of mold. Such systems shall be compliant with applicable building, housing, and fire code requirements and has undergone and related necessary inspections.
- (h) Each allowable outdoor accessory structure utilized for the indoor personal cultivation of marijuana shall be set back at a distance of three (3) to ten (10) feet from all property lines of the premises, subject to review and approval of the Community Development Director to ensure compliance with Health and Safety Code Section 11362.2.
- (i) The cultivation area shall not be accessible to persons under 21 years of age.
- (j) A portable fire extinguisher shall be kept in the same room where indoor cultivation occurs.
- (k) There shall be no external or noxious olfactory evidence of marijuana cultivation from any street, sidewalk, public right-of-way, or adjacent property.
- (l) Runoff and waste disposal by the residence where cultivation occurs must be in compliance with any applicable local, state, and federal regulations and laws.

Sec. 42-92 Outdoor Personal Cultivation of Marijuana Prohibited.

The personal cultivation of cannabis outdoors upon the grounds of a private residence shall be completely prohibited in all zones in the City of San Fernando, pursuant to Health and Safety Code Section 11361.2(b)(3).

SECTION 5. CEQA. The proposed Urgency Ordinance does not have the potential to cause significant effects on the environment and is exempt from the California Environmental

Quality Act (“CEQA”), pursuant to CEQA Guidelines Section 15061(b)(3), because there is no possibility that the activities contemplated herein will have a significant effect on the environment.

SECTION 6. Inconsistent Provisions. Any provision of the San Fernando City Code or appendices thereto that conflicts with the provisions of this Urgency Ordinance, to the extent of such conflict and no further, is hereby repealed or modified to the extent necessary to affect the provisions of this Urgency Ordinance.

SECTION 7. Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Urgency Ordinance, or any part thereof is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Urgency Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsection, subdivision, paragraph, sentence, clause or phrase would be subsequently declared invalid or unconstitutional.

SECTION 8. Effective Date. This Urgency Ordinance is enacted pursuant to the authority conferred upon the City Council of the City of San Fernando by Government Code sections 36934 and 36937 and shall be in full force and effect upon: (1) its adoption by a four-fifths (4/5) vote of the City Council; and (2) California state voter approval of Proposition 64 at the November 8, 2016 election.

[SIGNATURE PAGE TO FOLLOW]

PASSED, APPROVED, AND ADOPTED by the City Council of the City of San Fernando at its regular meeting on this 7th of November, 2016.

Robert C. Gonzales, Mayor

ATTEST:

Elena G. Chávez, City Clerk

APPROVED AS TO FORM:

Rick R. Olivarez, City Attorney

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) SS:
CITY OF SAN FERNANDO)

I, Elena G. Chávez, City Clerk of the City of San Fernando, do hereby certify that the above and foregoing Urgency Ordinance No. U-1658, was passed and adopted at the regular meeting of said City Council, duly held on the 7th day of November 2016, by the following votes to wit:

AYES: Ballin, Gonzales, Fajardo, Soto – 4

NOES: None

ABSTAIN: None

ABSENT: Lopez – 1

Elena G. Chávez, City Clerk