

ORDINANCE NO. 3386

(Moratorium on the Application, Licensing, and Operation of Recreational Marijuana Establishments and the Cultivation, Manufacturing, Production, Testing, Transportation, and the Sale of Recreational Marijuana)

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HENDERSON, NEVADA, TO IMPOSE A MORATORIUM ON THE APPLICATION, LICENSING, AND OPERATION OF RECREATIONAL MARIJUANA ESTABLISHMENTS AND THE CULTIVATION, MANUFACTURING, PRODUCTION, TESTING, TRANSPORTATION, AND SALE OF RECREATIONAL MARIJUANA IN THE CITY OF HENDERSON.

- WHEREAS, the people of the State of Nevada voted to pass Initiative Petition 1 (hereinafter referred to as "IP1" or "the act"), through Ballot Question 2 to legalize recreational marijuana through the general election held on November 8, 2016; and
- WHEREAS, IP1 becomes effective on January 1, 2017, and allows for adults over the age of 21 years of age to use marijuana for recreational purposes, subject to certain restrictions and regulations; and
- WHEREAS, Section 2 of IP1 sets forth the intent that the cultivation and sale of recreational marijuana should be regulated similar to other businesses; and
- WHEREAS, IP1 also mandates that the Department of Taxation shall begin accepting applications for recreational marijuana establishments from businesses that already hold a medical marijuana registration certificate pursuant to NRS Chapter 453A within twelve (12) months of the effective date of the act; and
- WHEREAS, the City of Henderson currently has approved applications for business licenses for medical marijuana establishments; and
- WHEREAS, Section 14 of IP1, makes it a misdemeanor to smoke or otherwise consume marijuana in a public place, a motor vehicle, or in a retail recreational marijuana store, but provides that the Nevada Legislature may amend provisions of IP1 to provide for the conditions in which a locality may permit consumption of recreational marijuana within a recreational marijuana retail store; and
- WHEREAS, the City Council of the City of Henderson has adopted Title 4 and Title 19 of the Henderson Municipal Code in order to protect the public health, safety, morals and welfare of the inhabitants of the City of Henderson through the regulation and control of persons engaging in the business of medical marijuana and to provide regulations concerning zoning and land use; and
- WHEREAS, pursuant to Section 2.130 of the Henderson City Charter, the Nevada Legislature has conferred upon the City Council the express power to regulate all businesses, trades and professions located within the City; and

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WHEREAS, pursuant to Section 2.190 of the Henderson City Charter, the Nevada Legislature has conferred upon the City Council the express power to adopt Ordinances and regulations relating to zoning and planning pursuant to NRS Chapter 278; and

WHEREAS, pursuant to NRS Chapter 268, the Nevada Legislature has determined that matters of local concern include any matter that primarily affects or impacts areas and persons located within the City, public safety in the City, the operation and control of City jails and prisoners and any public property controlled by the City including recreation and cultural centers; and

WHEREAS, the Nevada Legislature's express grant of authority, through the adoption of the Henderson City Charter, to regulate businesses, trades, and professions, and to adopt zoning and planning regulations necessarily and fairly implies that the City may adopt provisions for business licensing and zoning relating to recreational marijuana establishments; and

WHEREAS, Section 4 of IP1 provides an express grant of authority to municipalities to adopt and enforce local marijuana control measures pertaining to zoning and land use for recreational marijuana establishments; and

WHEREAS, current ordinances in the Henderson Municipal Code were enacted to regulate medical marijuana establishments pursuant to NRS 453A and did not contemplate potential issues related to the licensing and operation of recreational marijuana establishments; and

WHEREAS, the Henderson Municipal Code does not currently have any zoning, land-use or public safety regulations governing the sale of marijuana for recreational use and without a comprehensive zoning, land-use, and public safety regulatory scheme in place before the effective date of the act, the residents of the City of Henderson run the risk of having recreational marijuana related establishments that are operating in a manner that are not conducive to maintaining public safety and quality of life; and

WHEREAS, the City Council of the City of Henderson has declared that all businesses engaging in the sale of medical marijuana shall be licensed and regulated so as to protect the public health, safety, morals, good order and general welfare of the inhabitants of the City of Henderson and to safeguard the public; and

WHEREAS, Section 5 of IP1 gives the Department of Taxation up to 12 months after the effective date of the act to adopt regulations to carry out the provisions of the act, including but not limited to, dual licensure to operate a medical marijuana

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establishment and recreational marijuana establishments at the same location; and

WHEREAS, the City Council desires to take a reasonable amount of time for an orderly and thorough review of new regulations concerning the transportation and retail sale of recreational marijuana, including cultivation for personal use through the Henderson Municipal Code; and

WHEREAS, the City Council desires to thoughtfully consider any regulations that may be enacted by the Nevada Legislature or promulgated by the Nevada Department of Taxation during the next 6 month period, as well as the policy and legal implications relating to the application, licensing and regulation of recreational marijuana establishments within the boundaries of the City of Henderson, and therefore wishes to establish a moratorium on the licensing and operation of recreational marijuana establishments with the City; and

NOW, THEREFORE, the City Council of the City of Henderson, Nevada, does ordain that:

SECTION 1. For the purposes of this Ordinance the term “recreational marijuana” applies to all uses of marijuana other than the use of marijuana for medical (for the purposes of this Ordinance “medical marijuana”) purposes and regulated pursuant to NRS 453A and Chapters 4.05, 4.116 and 19.5.5.Y of the Henderson Municipal Code.

SECTION 2. A moratorium is hereby imposed on the application, licensing, and operation of all individuals, businesses or facilities seeking any license or permit for the purpose of the transportation or the retail sale of recreational marijuana for commercial purposes in the City of Henderson, prohibiting City acceptance, processing and consideration of any and all land use applications, zoning applications, business license applications, building permit applications or any other application or request to operate, license or permit a business or facility for such purposes.

SECTION 3. All City departments and City staff shall refuse to accept, process, review or approve any and all land use applications, business license applications, building permit applications and any other application or approval for recreational marijuana establishments that would be involved in the transportation or retail sale of recreational marijuana pursuant to Henderson Municipal Code Title 4 or Title 19 for a period of one hundred and eighty (180) days following the effective date of this Ordinance. This moratorium shall not prohibit the filing and acceptance of applications for licensing and permitting for individuals, facilities or businesses to engage in the cultivation, testing,

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production, or sale of medical marijuana pursuant to NRS 453A and Chapters 4.05, 4.116 and 19.5.5.Y of the Henderson Municipal Code.

SECTION 4. No individual, facility, or business, including any medical marijuana establishment presently licensed by the City of Henderson, or that obtains a license during the period of this moratorium, shall engage in the cultivation, manufacturing, production, testing, transportation or retail sale of recreational marijuana within the City of Henderson without first receiving the proper licenses, permits and approvals from the City of Henderson.

SECTION 5. The business license and conditional use permit of any medical marijuana establishment, or any other type of business presently licensed by the City of Henderson, or that obtains a business license during the period of this moratorium, that engages in the cultivation, manufacturing, production, testing, transportation or the retail sale of recreational marijuana without first receiving the proper licenses, permits and approvals from the City of Henderson shall be immediately subject to revocation pursuant to the provisions of Title 4 and Title 19 of the Henderson Municipal Code.

SECTION 6. This moratorium shall commence upon the adoption of this Ordinance by the City Council, and shall terminate at the close of business one hundred and eighty (180) calendar days from date of commencement of the moratorium, unless:

- (a) earlier terminated by the City Council; or
- (b) an extension of this moratorium is approved by the City Council at a public meeting. One extension of a period of no greater than one hundred and eighty (180) days is contemplated by this Ordinance and approval of such extension may be considered by a simple majority vote, without the need for adopting a new Ordinance.

SECTION 7. The City Council of the City of Henderson declares this moratorium for the following reasons:

- (a) the City Council of the City of Henderson has adopted Title 4 and Title 19 of the Henderson Municipal Code and declared that the public health, safety, morals and welfare of the inhabitants of the City of Henderson require the regulation and of licensing, zoning and land use related to the retail sale of recreational marijuana; and
- (b) the City Council desires to conduct a thorough review and update of the Henderson Municipal Code and to thoughtfully consider the policy and legal implications relating to the application, licensing, zoning, land use and other permissible regulatory supervision of establishments

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and businesses engaged in the transportation and the retail sale of recreational marijuana within the boundaries of the City of Henderson; and

- (c) Section 4 of IP1 provides an express grant of authority to cities to adopt and enforce local regulations and control measures pertaining to zoning and land use for recreational marijuana establishments, and the City needs time to thoughtfully consider how any regulations of the City would fit into the regulatory scheme enacted by the State of Nevada; and
- (d) The transportation and retail sale of recreational marijuana was not considered when the City Council developed regulations for medical marijuana establishments.

SECTION 8. If any section, subsection, sentence, clause, phrase, provision or portion of this Ordinance, or the application thereof to any person or circumstances, 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 or provisions of this Ordinance or their applicability to distinguishable situations or circumstances.

SECTION 9. All ordinances, or parts of ordinances, sections, subsections, phrases, sentences, clauses or paragraphs contained in the Municipal Code of the City of Henderson, Nevada, in conflict herewith are repealed and replaced as appropriate.

SECTION 10. A copy of this Ordinance shall be filed with the office of the City Clerk, and notice of such filing shall be published once by title in the Review Journal, a newspaper having general circulation in the City of Henderson, at least ten (10) days prior to the adoption of said Ordinance, and following approval shall be published by title (or in full if the Council by majority vote so orders) together with the names of the Councilmen voting for or against passage for at least one (1) publication before the Ordinance shall become effective. This Ordinance is scheduled for publication on February 10, 2017, in the Review Journal.

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Editor's Note: Pursuant to City Charter Section 2.090(3), language to be omitted is red and enclosed in [brackets], and language proposed to be added is in blue italics and underlined.

PASSED, ADOPTED, AND APPROVED THIS 7th DAY OF FEBRUARY, 2017.



Andy Hafen, Mayor

ATTEST:



Sabrina Mercadante, MMC, City Clerk

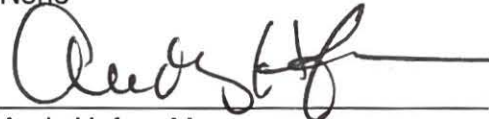
The above and foregoing Ordinance was first proposed and read in title to the City Council on January 17, 2017 which was a Regular Meeting, and referred to a Committee of the following Councilmen:

“COUNCIL AS A WHOLE”

Thereafter on February 7, 2017, said Committee reported favorably on the Ordinance and forwarded it to the Regular Meeting with a do-pass recommendation. At the Regular Meeting of the Henderson City Council held February 7, 2017, the Ordinance was read in title and adopted by the following roll call vote:

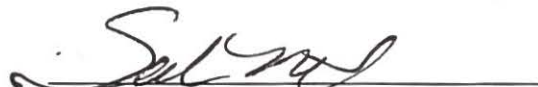
Those voting aye: Andy Hafen, Mayor
Councilmembers:
Debra March
John F. Marz
Gerri Schroder
Dan H. Stewart

Those voting nay: None
Those abstaining: None
Those absent: None



Andy Hafen, Mayor

ATTEST:



Sabrina Mercadante, MMC, City Clerk