

ORDINANCE NO. 2214

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CAMPBELL PROHIBITING AND REGULATING NON-MEDICAL MARIJUANA IN THE EVENT OF THE PASSAGE OF STATE PROPOSITION 64

The City Council of the City of Campbell does ordain as follows:

Section 1: Findings and Recitals:

The City Council finds and acknowledges:

- A. The Federal Controlled Substances Act, 21 U.S.C. section 841, prohibits the possession, sale and distribution of marijuana; and all uses that are inconsistent with Federal law are presently prohibited in all zoning districts in the City of Campbell;
- B. Many California cities, as well as the City of Campbell, have reported negative impacts of marijuana processing and distribution activities, including offensive odors, illegal sales and distribution of marijuana, trespassing, theft, violent robberies and robbery attempts, fire hazards, and problems associated with mold, fungus, and pests;
- C. Marijuana plants, as they begin to flower and for a period of two months or more, produce a strong odor, offensive to many people, and detectable far beyond property boundaries if grown outdoors;
- D. The strong smell of marijuana creates an attractive nuisance, alerting persons to the location of the valuable plants, and creating a risk of burglary, robbery or armed robbery;
- E. The indoor cultivation of marijuana has potential adverse effects to the structural integrity of the building, and the use of high wattage grow lights and excessive use of electricity increases the risk of fire which presents a clear and present danger to the building and its occupants;
- F. The Attorney General's August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use recognizes that the cultivation or other concentration of marijuana in any location or premises without adequate security increases the risk that nearby homes or businesses may be negatively impacted by nuisance activity such as loitering or crime;
- G. In light of these threats to the public peace, health and safety, on January 19, 2016, the City Council adopted Resolution 11938, affirming that the cultivation

of marijuana is prohibited under the zoning title of the Campbell Municipal Code;

- H. Similarly, on March 1, 2016, the City Council adopted Ordinance No. 2197, expressly prohibiting marijuana processing, distribution, dispensing and delivery in the City of Campbell;
- I. The Control, Regulate and Tax Adult Use of Marijuana Act ("AUMA") has qualified for the November 8, 2016 ballot as Proposition 64. The purpose of AUMA is to establish a comprehensive system to legalize, control and regulate the cultivation, processing, manufacture, distribution, testing, and sale of nonmedical marijuana, including marijuana products. Adults, age 21 and older, will be allowed to possess marijuana and grow certain amounts at home for personal use;
- J. Among other things, AUMA would authorize the personal cultivation of up to six marijuana plants in a private residence for non-medical purposes;
- K. However, AUMA authorizes cities to prohibit marijuana businesses within their jurisdictions;
- L. Likewise, under AUMA, cities can enact reasonable regulations for the cultivation of non-medical marijuana that occurs inside a residence or accessory structure, and may completely prohibit outdoor non-medical marijuana cultivation until such time as the California Attorney General determines that the non-medical use of marijuana is lawful in California under federal law; and the California Attorney General has not made a determination that non-medical use of marijuana is lawful in California under Federal law;
- M. It is not entirely clear under AUMA whether or not a City must expressly prohibit non-medical marijuana uses in order to preclude such uses within the jurisdiction of the City;
- N. Section 7 of Article 11 of the California Constitution provides the City Council with the authority to make and enforce all laws, rules and regulations with respect to not in conflict with general laws, and the power to exercise, or act pursuant to any and all rights, powers, and privileges, or procedures granted or prescribed by any law of the State of California;
- O. Based on the foregoing findings the City Council further finds and concludes that the impact of the potential adoption of AUMA on the City of Campbell creates an urgent and immediate threat to the public peace, health or safety, necessitating the adoption of this ordinance;

- P. It would not be possible to adopt this ordinance by routine procedures in time to become effective prior to the November 9, 2016 effective date of AUMA;
- Q. Therefore, the adoption of this ordinance as an urgency measure is necessary for the immediate preservation of the public peace, health or safety

Section 2: The City Council hereby adds Chapter 8.40 entitled "Non-Medical Marijuana" to Title 8 of Campbell Municipal Code to read as follows:

8.40.010 Legislative Findings and Statement of Purpose.

The City Council finds that the prohibitions on marijuana processing, delivery, cultivation, sale and distribution are necessary for the preservation and protection of the public health, safety, and welfare for the City and its community.

8.40.020 Definitions.

For purposes of this Chapter, the following definitions shall apply:

- A. Except as otherwise set forth in this section, the definitions contained in section 8.38.020 of this Title shall apply;
- B. "Marijuana" shall also include all things covered by section 11018 of the California Health and Safety Code, in addition to the definition contained in section 8.38.020;
- C. "Medical marijuana or medical marijuana use" means the use of cannabis for the purposes set forth in the Compassionate Use Act and the Medical Marijuana Program Act, California Health and Safety Code sections 11362.5 and 11362.7 et seq.;
- D. "Non-medical marijuana" or "non-medical marijuana use" means all marijuana or uses of marijuana not included within the definition of medical marijuana use;
- E. "Private residence" means a lawfully existing house, an apartment unit, a mobile home or other similar dwelling.

8.40.030 Prohibited Activities.

Except as otherwise provided in this Title, all non-medical marijuana use is prohibited in the City of Campbell, including but not limited to cultivation, processing, delivery, sale and dispensing.

8.40.040 Indoor Cultivation.

To the extent that the City is required by State law to allow the cultivation of marijuana, the rules set forth in this section shall apply:

- A. The cultivation of marijuana may take place only inside a lawfully existing and fully enclosed and secure private residence, or inside a lawfully existing and fully enclosed and secure accessory structure to a private residence that is located on the same parcel as the private residence. No cultivation shall occur outside of a fully enclosed structure;
- B. The primary use of the property shall be for a residence;
- C. All areas used for cultivation of non-medical marijuana shall comply with Title 18 (Buildings Codes and Regulations) of the Campbell Municipal Code, as well as all other applicable laws;
- D. Indoor grow lights are not allowed in any structure used for human habitation. Indoor grow lights in any other structure shall not exceed 1,000 watts per light, and shall comply with the California Building, Electrical and Fire Codes as adopted by the City;
- E. The use of gas products (CO₂, butane, propane, natural gas, etc.) or generators for cultivation of non-medical marijuana is prohibited;
- F. Any structure used for the cultivation of non-medical marijuana must have a ventilation and filtration system installed that shall prevent marijuana plant odors from exiting the interior of the structure, and designed to prevent mold and moisture and otherwise protect the health and safety of persons residing in the residence and cultivating the marijuana. This ventilation shall at a minimum consist of a system meeting the requirements of the current, adopted edition of the California Building Code § 1203.4 Natural Ventilation or § 402.3 Mechanical Ventilation (or its equivalent(s));
- G. Any accessory structure used for the cultivation of non-medical marijuana shall be located in the rear yard area of the parcel or premises, and must maintain a minimum setback equal to the greater of (1) the setback imposed pursuant to the applicable zoning provisions of Title 21 of this Code, or ten-feet from any property line. The yard where the structure is maintained must be enclosed by a solid fence at least six feet in height;

- H. Adequate mechanical locking or electronic security systems must be installed as part of the structure prior to the commencement of cultivation;
- I. Marijuana cultivation shall be limited to six marijuana plants per private residence, regardless of whether the marijuana is cultivated inside the residence or in an accessory structure. The limit of six plants per private residence shall apply regardless of how many individuals reside at the private residence;
- J. The residential structure shall remain at all times a residence, with legal and functioning cooking, sleeping and sanitation facilities with proper ingress and egress. No room used for cooking of meals, sleeping and bathing shall be used for cultivation;
- K. Cultivation of non-medical marijuana shall only take place on impervious surfaces;
- L. There shall be no exterior evidence of marijuana cultivation occurring on the parcel;
- M. No more than one room in any structure may be used for cultivation;
- N. The marijuana cultivation area shall not exceed thirty-two (32) square feet and not exceed ten feet (10') in height per residence. This limit applies regardless of the number of individuals residing in the residence;
- O. No room or area in a structure that is used for cultivation shall be accessible to persons under 21 years of age;
- P. Written consent of the property owner to cultivate non-medical marijuana within the residential structure shall be obtained and shall be kept on the premises, and available for inspection by agents of the City;
- Q. A portable fire extinguisher, that complies with the regulations and standards adopted by the State Fire Marshal and applicable law, shall be kept in any room used for cultivation of marijuana;
- R. No one other than a full-time resident of the residence shall be involved or take part in the cultivation;

- S. No chemicals fertilizers, pesticides, or other chemical agents shall be used for marijuana cultivation;
- T. The marijuana cultivation area shall not adversely affect the health or safety of the nearby residents by creating dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration, or other impacts; and shall not be conducted in a manner that is hazardous due to the use or storage of materials, processes, products or wastes, or from other actions related to the cultivation;
- U. The owner and any lessee of the residence upon which cultivation will occur shall inform the Police Department of the intent to cultivate marijuana. This notification shall be provided prior to the commencement of the cultivation;
- V. Cultivation shall be limited exclusively for the personal use of lawful residents of the property on which the cultivation is occurring.

Section 3: Subparagraph (Q) of paragraph (6) of subsection (a) of section 6.10.020 of the Campbell Municipal Code is hereby amended to read (with underlining indicating new text):

A violation of any of the provisions of Campbell Municipal Code Chapters 5.24, 5.28, 5.29, 5.30, 5.36, 5.48, 5.58, 6.11, 6.20, 6.30, 8.34, 8.38, 8.40, 11.04, 11.08, 11.12, 11.16, 11.32, 13.04, or 14.02,

Section 4: The provisions of Campbell Municipal Code section 8.40.030 as enacted by Section 2 of this ordinance are declaratory of existing law in the City of Campbell, and are intended to clarify and facilitate, and not to supersede the existing provisions contained in existing law.

Section 5: If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the 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 hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared, invalid or unconstitutional.

Section 6: The City Council finds the approval of this ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly. Alternatively, the City Council finds the

approval of this ordinance is not a project under CEQA Regulation Section 15061(b)(3) because it has no potential for causing a significant effect on the environment.

Section 7: This ordinance is adopted as an urgency measure pursuant to subsection (b) of California Government Code section 36937, and shall take effect immediately, except that it shall not become enforceable unless and until AUMA is enacted into law. In the event that the voters do not approve AUMA at the election of November 8, 2016, this ordinance shall be of no further force or effect.

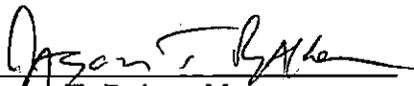
PASSED AND ADOPTED this 1st day of November, 2016 by the following roll call vote:

AYES: Councilmembers: Kotowski, Resnikoff, Cristina, Gibbons, Baker

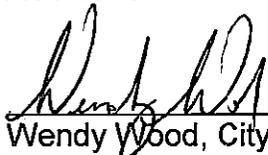
NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:


Jason T. Baker, Mayor

ATTEST:


Wendy Wood, City Clerk