

ORDINANCE NO. 2016-300

AN INTERIM ORDINANCE ADOPTED AS AN URGENCY MEASURE PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTION 65858 OF THE TOWN OF WINDSOR ESTABLISHING A TEMPORARY MORATORIUM ON THE OUTDOOR CULTIVATION OF NONMEDICAL MARIJUANA

WHEREAS, in 1996 the voters of California approved Proposition 215, codified as California Health and Safety Code Section 11362.5 and entitled “The Compassionate Use Act of 1996”; and

WHEREAS, the intent of Proposition 215 was to enable persons who are in need of medical marijuana for specified medical purposes to obtain medical marijuana, and use it under limited, specified circumstances without fear of criminal prosecution under State law; and

WHEREAS, in 2003, the State Legislature enacted SB 420, codified as California Health and Safety Code Section 11362.7 et seq. and entitled the “Medical Marijuana Program Act” (“MMPA”) to clarify the scope of The Compassionate Use Act of 1996; and

WHEREAS, effective January 1, 2016, the Medical Marijuana Regulation and Safety Act (“MMRSA”) became effective under which an extensive state regulatory scheme was established providing for the monitoring, inspecting and licensing of commercial medical marijuana businesses. The MMRSA created a dual-licensing system under which medical marijuana businesses have to obtain both state and local licenses in order to conduct such businesses. However, the MMRSA explicitly acknowledged that cities and counties retain the right to not only regulate such activities, but to ban them entirely. The MMRSA also acknowledged that permissive zoning schemes can implicitly prohibit such activities, including the indoor and outdoor cultivation of medical marijuana when those zoning regulations do not expressly list such activities as permitted or conditionally permitted uses; and

WHEREAS, on February 17, 2016, the Town Council adopted Resolution No. 3257-16, which confirmed that the Town of Windsor Zoning Ordinance prohibited and prohibits medical marijuana dispensaries in all zones throughout the Town, and the cultivation of marijuana in all zoning districts; and

WHEREAS, on November 8, 2016, the voters approved Proposition 64, the Control, Regulate and Tax Adult Use of Marijuana Act, which legalizes the recreational, nonmedical use of marijuana in California for individuals 21 years of age and older; and

WHEREAS, Proposition 64 authorizes the personal cultivation of up to six marijuana plants within a private residence or upon the “grounds” of that private residence for nonmedical purposes; and

WHEREAS, pursuant to Proposition 64, the Town may completely prohibit outdoor nonmedical marijuana cultivation for personal use until such time as the California Attorney General determines that the nonmedical use of marijuana is lawful in California under federal law, at

which time any ban on the outdoor cultivation of nonmedical marijuana would be nullified. The California Attorney General has not made a determination that nonmedical use of marijuana is lawful in California under Federal law; and

WHEREAS, Article XI, Section 7 of the California Constitution provides that a city may make and enforce within its limits all local police, sanitary and other ordinances and regulations not in conflict with general laws; and

WHEREAS, California Government Code Section 65858 authorizes a city to adopt as an urgency measure an interim ordinance to protect the public safety, health, and welfare; and

WHEREAS, with the passage of Proposition 64, it is more likely than not that the number of individuals who will desire to and will cultivate nonmedical marijuana for personal use will be significant. It is further more likely than not that substantial numbers of persons interested in cultivating nonmedical marijuana will commence doing so immediately, unless and until local regulations and/or prohibitions (on outdoor cultivation) are enacted which control such activities; and

WHEREAS, the cultivation of medical and nonmedical marijuana in other cities has resulted in calls for service to their police departments, including calls for robberies and thefts, and an increase in criminal activity, and it is reasonable to assume that unless the Town imposes reasonable controls, similar, if not greater, numbers of such incidents pertaining to the cultivation of nonmedical marijuana will occur in the Town of Windsor. Similar incidents involving complaints resulting in criminal investigations and the discovery of illegal marijuana cultivations have occurred in the Town of Windsor. With the passage of Proposition 64 passes, absent the restrictions imposed by this Ordinance, there is a current and immediate threat to the public health, safety and welfare of substantial numbers of persons cultivating nonmedical marijuana outdoors and creating the complaints and enforcement problems already experienced in other communities and in the Town of Windsor, and exposing citizens to robberies, potential violence, vandalism of property and theft of marijuana plants being openly and visibly grown in the yards and grounds of residential properties throughout the Town; and

WHEREAS, based upon the experience of the State of Colorado and other states in which nonmedical marijuana has been legalized, the passage of Proposition 64 is likely to have significant impacts on law enforcement, the medical resources of the State and the regulatory function of local agencies, including the Town of Windsor; and

WHEREAS, the short period between Proposition 64's qualification for the November 8, 2016 ballot and the November 8, 2016 election and Proposition 64's creation of a complex, state-wide licensing system for the commercial production, delivery, marketing, testing and selling of nonmedical marijuana have impeded and prevented the Town from adequately studying its impacts and the most appropriate manner in which to comprehensively address the issues implicated by the Proposition and its implementation. The Town needs time to further study Proposition 64 and whether and to what extent the Town's General Plan, development code and other regulations need to be or should be modified to accommodate and/or address the impacts of Proposition 64 on the Town and its citizens. Were the Town Council to permit the outdoor

cultivation of nonmedical marijuana while it studied the means and methods to address such activities, those persons who were engaged in such outdoor cultivation activities could garner rights to continue such activities as grandfathered uses, unaffected by later-enacted legislation by the Town Council. Such an outcome presents an immediate and current threat to the ability of the Town Council to properly plan and regulate such activities and will undermine the purpose of any such plan and regulation as to those persons who were able to commence the outdoor cultivation of nonmedical marijuana before such plans and/or regulations were put into place; and

WHEREAS, in order to determine the most appropriate and publicly beneficial manner in which to address the outdoor cultivation of nonmedical marijuana issues implicated by Proposition 64 and the effect of such outdoor cultivation activities should the Town determine to permit such uses within the Town’s corporate boundaries, and in order to protect residents and businesses from the potential harmful effects of some outdoor nonmedical marijuana cultivators, the Town needs time to study whether to permanently permit and regulate, or prohibit, such uses, including, without limitation, to study potential regulations to ensure that minors cannot get access to marijuana plants, and, if the Council determines to permit such uses, to examine the regulations relating thereto and to permit the public adequate time to review and comment upon the issue in accordance with state law in tandem with the Town’s consideration of any such regulations or prohibition; and

WHEREAS, it would be destructive of and render ineffective any proposed policies, restrictions, ordinances and regulations if, during the period they are being studied and considered by the Town, parties seeking to avoid their operation and effect establish such uses, which said operations and activities will defeat, in whole or in part, the objectives of such policies, restrictions, ordinances and regulations; and

WHEREAS, absent the adoption of this interim urgency ordinance, it is likely that the establishment and operation of outdoor nonmedical marijuana cultivations within the Town, without appropriate controls in place to regulate outdoor nonmedical marijuana cultivations and their impacts on the community, will result in harmful effects to the businesses, property owners and residents of the Town; and

WHEREAS, because of the facts set forth above, there exists a current and immediate threat that persons shall commence outdoor nonmedical cultivation operations, that such commencement poses a current and immediate threat to the health, safety and welfare of the citizens of the Town and having such uses commence operations and operate in the Town before the Town has had an opportunity to consider, study and/or adopt regulations (or prohibitions) governing the said outdoor cultivations will render such regulations ineffective and destroy the purpose of engaging in such an analysis and process in the first place, thus constituting a current and immediate threat to the health, safety and welfare of the citizens of the Town; and

WHEREAS, the Town Council desires to adopt an interim moratorium on the outdoor cultivation of nonmedical marijuana throughout the Town; and

WHEREAS, pursuant to Section 15001 of the California Environmental Quality Act (“CEQA”) Guidelines, this ordinance is exempt from CEQA based on the following findings:

- (1) This ordinance is not a project within the meaning of Section 15378 of the State CEQA Guidelines, because it has no potential for resulting in physical change in the environment, directly or ultimately.
- (2) This ordinance is categorically exempt from CEQA under Section 15308 of the CEQA Guidelines as a regulatory action taken by the Town pursuant to its police power and in accordance with Government Code Section 65858 to assure maintenance and protection of the environment pending the consideration, evaluation and possible adoption of contemplated local legislation, regulation and policies, and is categorically exempt pursuant to CEQA Guidelines Section 15306 regarding collection of information as part of a study leading to an action not yet approved, adopted or funded.
- (3) This ordinance is not subject to CEQA under the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. For the reasons set forth in subparagraphs (1) and (2), above, and pursuant to CEQA Guidelines Section 15061, it can be seen with certainty that there is no possibility that this ordinance will have a significant effect on the environment.

NOW THEREFORE, THE TOWN COUNCIL OF THE TOWN OF WINDSOR DOES ORDAIN AS FOLLOWS:

Section 1. Recitals Made Findings.

The above recitals are hereby declared to be true and correct and represent the findings of the Town Council of the Town of Windsor, made in the exercise of its independent judgment. Said findings are incorporated by this reference.

Section 2. Urgency Moratorium Imposed.

A. Scope.

In accordance with the authority granted the Town of Windsor under Article XI, Section 7 of the California Constitution and California Government Code Section 65858, from and after the effective date of this ordinance, no permit, variance, building permit, approval or any other applicable license or entitlement for use, including, but not limited to any land use entitlement, or the issuance of a business license, shall be approved or issued for the cultivation of nonmedical marijuana outdoors. The cultivation of nonmedical marijuana outdoors is hereby expressly prohibited in all areas and in all zoning districts of the Town during the period of time which this ordinance, and any extension thereof, if any, is in effect.

B. Definitions.

1. "Fully enclosed and secure structure" means a space within a building that complies with the applicable provisions of the California Building Standards Code as adopted and amended by Title VII, Chapter 2 of the Windsor Town Code, and has a complete roof enclosure supported by connecting walls extending from the ground to the roof, a foundation, slab or equivalent base to which the floor is secured by bolts or similar attachments, is secure against unauthorized entry, and is accessible only through one or more lockable doors. Walls and roof must be constructed of solid materials that cannot be easily broken through, and must be constructed with non-transparent material. Plastic sheeting, canvas, vinyl, or similar products or materials, regardless of gauge, are not considered solid materials. A fully enclosed and secure structure must be an accessory structure to a private residence located upon the parcel on which that private residence is situated.

2. "Nonmedical marijuana" means marijuana that is intended to be used for nonmedical purposes pursuant to Health and Safety Code section 11362.1 *et seq.*, as those sections may be amended from time to time.

3. "Nonmedical marijuana cultivation" or the "cultivation of nonmedical marijuana" means the planting, growing, harvesting, drying, curing, grading, trimming or processing of marijuana plants or any part thereof pursuant to Health and Safety Code section 11362.1 *et seq.*, as those sections may be amended from time to time.

4. "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; *cannabis*; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin.

5. "Outdoors" means any location within the Town that is not within a fully enclosed and secure structure or a private residence.

C. Statutory Findings and Purpose.

This ordinance is declared to be an interim ordinance as defined under California Government Code Section 65858. This ordinance is deemed necessary to protect the public safety, health, and welfare based on the findings of the Town Council of the Town of Windsor as set forth in the recitals, incorporated by Section 1 of this ordinance.

Section 3. Establishment, Maintenance or Operation of Nonmedical Marijuana Cultivation Outdoors Declared Public Nuisance.

It is unlawful and a public nuisance for any person owning, leasing, occupying, or having possession of any legal parcel or premises within any zoning district in the Town to cause or allow such parcel or premises to be used for the outdoor cultivation of nonmedical marijuana. Violations of this ordinance may be enforced by any applicable laws or ordinances, including but not limited to injunctions, or administrative penalties under the Town of Windsor Code.

Section 4. Severability.

If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance, including the application of such part or provision to other persons or circumstances shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this ordinance are severable. The Town Council of the Town of Windsor hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be held unconstitutional, invalid, or unenforceable.

Section 5. Effective Date and Duration.

This ordinance shall become effective immediately upon its adoption on November 16, 2016, if adopted by at least four-fifths vote of the Town Council, and shall be in effect for 45 days from its adoption unless extended by the Town Council in accordance with California Government Code Section 65858.

Section 6. Posting.

The Town Clerk shall cause this ordinance to be published and/or posted within fifteen days after its adoption in accordance with California Government Code Section 36933.

This ordinance was adopted on the 16th day of November 2016, by the following vote:

AYES:	COUNCILMEMBERS FOPPOLI, OKREPKIE, VICE MAYOR FUDGE AND MAYOR MILLAN
NOES:	NONE
ABSTAIN:	NONE
ABSENT:	COUNCILMEMBER SALMON


MARK MILLAN, MAYOR

ATTEST:


MARIÁ DE LA O, TOWN CLERK