

ORDINANCE NO. 30-2016

AN URGENCY INTERIM ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ELK GROVE ADOPTING A MORATORIUM ON ALL COMMERCIAL MARIJUANA LAND USES AND ALL MARIJUANA CULTIVATION IN THE CITY OF ELK GROVE

The City Council of the City of Elk Grove hereby does ordain as follows:

Section 1: Purpose and Authority.

In the interest of protecting the health, safety, and welfare of the residents in the City of Elk Grove, it is the purpose and intent of this ordinance to place a temporary moratorium on all commercial marijuana land uses in the City and prohibit all marijuana cultivation for personal use in the City while the City evaluates and adopts appropriate land uses and reasonable regulations following the passage of the Control, Regulate, and Tax Adult Use of Marijuana Act (Proposition 64). The City Council has authority to adopt this ordinance pursuant to California Constitution Article XI, Section 7 and Government Code Section 65858 as an urgency measure prohibiting a use that may be conflict with a contemplated general plan, specific plan, or zoning proposal that the City is considering or studying.

This urgency ordinance is not intended to interfere with a patient's access and use of medical marijuana, as provided for in California Health and Safety Code Section 11362.5. This ordinance is intended to supplement existing law. Nothing herein is intended to impair any existing City ordinance concerning medical or non-medical marijuana within the City. Any restrictions provided herein, and remedies flowing herefrom, are cumulative to any other restriction or remedy provided under existing local, state, or federal law.

Section 2: Findings.

On November 8, 2016, the Control, Regulate, and Tax Adult Use of Marijuana Act (Proposition 64) ("AUMA") was passed by California voters during the state-wide general election. The AUMA legalized non-medical use and cultivation of marijuana by persons 21 years of age and over, and created a state and local regulatory and licensing system governing commercial cultivation, testing, manufacturing and distribution of non-medical marijuana and marijuana products.

AUMA allows local governments to reasonably regulate the cultivation of marijuana for personal use through zoning and other local laws, and it allows local governments to ban outdoor cultivation. Local governments also maintain the ability to adopt business and land use regulations and/or prohibitions for commercial marijuana activities.

This urgency ordinance is necessary to promote the immediate preservation of the peace, health, and safety of the public against the potential detrimental impacts of marijuana cultivation, processing, manufacturing, distribution and sale uses, which impacts may include, without limitation, criminal activity, odors and mold, degradation of the natural environment, excess energy consumption, and indoor electrical fire hazards.

The City has a significant interest in preserving the health, safety, and welfare of its residents by enacting reasonable regulations on personal marijuana cultivation, and to protect the public against businesses and commercial enterprises that traditionally have been an attraction for criminal and other activities that threaten public safety and the business.

Section 3: Environmental Review/California Environmental Quality Act (CEQA).

This ordinance is intended to preserve the status quo, and it will not cause a direct physical change in the environment, nor a reasonably foreseeable indirect physical change in the environment. The enactment of this ordinance, therefore, does not constitute the approval of a project under the California Environmental Quality Act ("CEQA"), and it is exempt from CEQA. (Pub. Res. Code § 21065, CEQA Guidelines §§ 15060(c),(2)(3); 15061(b)(3); 15064(d)(3); 15378(a).)

Section 4: Definitions.

As used herein the following definitions shall apply:

- A. "Commercial marijuana land uses" means the cultivation, possession of non-medical marijuana and marijuana products, manufacture, processing, distribution, storing, laboratory testing, grading, marketing, packaging, labeling, delivery, transportation, use, or sale of marijuana and marijuana products, whether or not through a for-profit or non-profit enterprise, and whether or not conducted with a license issued in accordance with Division 10 of the Business and Professions Code (Business and Professions Code section 26000, et seq.).
- B. "Cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of marijuana, whether occurring indoors or outdoors.
- C. "Marijuana" shall have the meaning as provided in California Health and Safety Code Section 11018.
- D. "Marijuana products" shall have the meaning as provided in California Health and Safety Code Section 11018.1.
- E. "Medical marijuana" means marijuana for medical purposes upon the recommendation of a physician under the Compassionate Use Act of 1996.

Section 5: Use Regulation.

During the term of this ordinance, all marijuana cultivation and all commercial marijuana land uses shall be prohibited in all zoning districts and lands within the City of Elk Grove.

Section 6: Term of Ordinance.

This ordinance shall be in effect from the date of adoption for a period of forty-five (45) days, unless it is extended pursuant to Government Code Section 65858(a) or other applicable law, as approved by the City Council.

Section 7: No Mandatory Duty of Care.

This ordinance is not intended to and shall not be construed or given effect in a manner that imposes upon the City or any officer or employee thereof a mandatory duty of care towards persons and property within or without the City, so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

Section 8: Severability.

If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable. This City Council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the ordinance be enforced.

Section 9: Effective Date and Publication.

This ordinance, passed by at least a four-fifths vote of the City Council, is declared to be an urgency ordinance for preserving the public health, safety and welfare and shall take effect and be enforced immediately upon adoption.


ORDINANCE: **30-2016**
ADOPTED: December 14, 2016
EFFECTIVE: December 14, 2016



STEVE LY, MAYOR of the
CITY OF ELK GROVE

ATTEST:


JASON LINDGREN, CITY CLERK

APPROVED AS TO FORM:


JONATHAN P. HOBBS,
CITY ATTORNEY

Date signed: December 22, 2016

CERTIFICATION
ELK GROVE CITY COUNCIL URGENCY INTERIM ORDINANCE NO. 30-2016

STATE OF CALIFORNIA)
COUNTY OF SACRAMENTO) ss
CITY OF ELK GROVE)

I, Jason Lindgren, City Clerk of the City of Elk Grove, California, do hereby certify that the foregoing urgency interim ordinance, published and posted in compliance with State law, was duly introduced, approved, and adopted by the City Council of the City of Elk Grove at a regular meeting of said Council held on December 14, 2016 by the following vote:

AYES : COUNCILMEMBERS: Ly, Detrick, Hume, Suen

NOES: COUNCILMEMBERS: None

ABSTAIN: COUNCILMEMBERS: None

ABSENT: COUNCILMEMBERS: None


Jason Lindgren, City Clerk
City of Elk Grove, California

