

## ORDINANCE NO. 693

### AN INTERIM URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COMMERCE, CALIFORNIA, DECLARING AND EXTENDING THE EXISTING CITYWIDE MORATORIUM ON CANNABIS-RELATED ACTIVITIES

**WHEREAS**, the City of Commerce (“City”) is a general law city, incorporated under the laws of the State of California, and it has an interest in planning and regulating the use of property within the City;

**WHEREAS**, implicit in any plan or regulation is the City's interest in maintaining the quality of life and the character of the City's neighborhoods, as without stable, well-planned neighborhoods, sections of the City can quickly deteriorate, with consequences to social, environmental, and economic values;

**WHEREAS**, under Chapter 5.61 of the Commerce Municipal Code, the City currently prohibits medical marijuana dispensaries, and the delivery, processing and cultivation of medical marijuana;

**WHEREAS**, on November 8, 2016, California voters approved Proposition 64 enacting the Adult Use of Marijuana Act (“AUMA”);

**WHEREAS**, AUMA legalized various non-medical marijuana activities for persons 21 years of age or older, including but not limited to non-medical marijuana businesses, dispensaries, retailers, delivery services, use, possession, transportation, manufacturer, testing, indoor and outdoor cultivation, and other activities as detailed and outlined in the AUMA (collectively, “Non-Medical Marijuana Uses”);

**WHEREAS**, the AUMA allows for local governments to regulate, control, and prohibit various Non-Medical Marijuana Uses authorized by the AUMA, and if local governments fail to enact local ordinances concerning such matters, the AUMA and associated state laws and regulations will govern;

**WHEREAS**, some or all Non-Medical Marijuana Uses may result in negative impacts on the health, safety and welfare of City residents, especially if unregulated;

**WHEREAS**, Senate Bill 94 became law on June 27, 2017, which merged California's licensing scheme relative to medical marijuana activities and businesses, with the licensing scheme enacted by the AUMA. What was formerly known as the AUMA has now been renamed to the “Medicinal and Adult-Use Cannabis Regulation and Safety Act” (hereinafter, “MAUCRSA” or “AUMA”);

**WHEREAS**, AB 133 became law on September 18, 2017 which, amongst other changes, removes the requirement that different commercial license types of cannabis businesses (e.g., cultivators, manufacturers, retailers, etc.) maintain “separate and distinct” premises. By removing that requirement, a single physical location can now hold multiple state licenses, subject to applicable local ordinances;

**WHEREAS**, the California Bureau of Cannabis Control recently issued emergency regulations clarifying and governing the implementation and administration of California's medical marijuana laws and the AUMA;

**WHEREAS**, the impact of the AUMA and legalization of Non-Medical marijuana on the City of Commerce and its residents is unclear at this time, and it is foreseeable that since January 1, 2018, with the State's implementation of its licensing scheme, the City may see an immediate influx of applications for Non-Medical Marijuana Uses, as well as an influx of unpermitted and unregulated Non-Medical Marijuana Uses, the scope and extent of which is difficult to predict at this time;

**WHEREAS**, the City's interpretation and intent of its current ban on all medical marijuana activities in Chapter 5.61 of the Commerce Municipal Code, and the permissive

zoning scheme codified in Title 19 of the Commerce Municipal Code, is that all medical, non-medical, and recreational marijuana uses and activities, including those legalized or authorized by the AUMA, SB 94 and AB 133 are prohibited in the City;

**WHEREAS**, despite such interpretation and intent of the City, the Commerce Municipal Code does not expressly prohibit the Non-Medical Marijuana Uses legalized or authorized by the AUMA and SB 94, and it is foreseeable that persons seeking to engage in Non-Medical Marijuana Uses may attempt to establish such uses in the City despite Chapter 5.61 and Title 19 of the Commerce Municipal Code;

**WHEREAS**, to avoid doubt as to the current illegality of Non-Medical Marijuana Uses in the City, to allow the City time to study the impacts of Non-Medical Marijuana Uses on the general health, safety, and welfare of City residents, and the consistency of such Non-Medical Marijuana Uses with the City's General Plan and Zoning Code, and to enable the City time to evaluate whether to allow such uses within the City, the City Council desires to adopt an interim Ordinance as an urgency ordinance, effective immediately, declaring and establishing an extension to the moratorium on all Non-Medical Marijuana Uses legalized or authorized by the AUMA in order protect the public health, safety, and welfare of City residents;

**WHEREAS**, pursuant to Government Code Section 65858, Urgency Ordinance No. 691 is scheduled to expire on January 19, 2018, unless the City Council, after holding a duly noticed public hearing, adopts an Ordinance extending Urgency Ordinance No. 691 for an additional ten (10) months and fifteen (15) days;

**WHEREAS**, the conditions given rise to Urgency Ordinance No. 691 continue to exist, such that an extension of the moratorium on Non-Medical Marijuana Activities is immediately necessary and appropriate to protect the public health, safety, and general welfare of City residents, in that the AUMA became effective immediately upon approval by California voters, staff requires time to study whether Non-Medical Marijuana Activities are consistent with the purpose(s) and intent of the City's General Plan and Zoning Code, to evaluate the scope and extent of prohibitions or regulations of such activities, and various other matters associated with Non-Medical Marijuana Activities;

**WHEREAS**, in accordance with Government Code Section 65858, the City Council desires to adopt this Ordinance as an urgency ordinance, effective immediately, extending the moratorium on Non-Medical Marijuana Activities imposed by Urgency Ordinance No. 691 for an additional ten (10) months and fifteen (15) days (unless earlier superseded or rescinded by the City Council), subject to certain amendments concerning the indoor personal cultivation or marijuana to confirm with the mandates of the AUMA; and

**WHEREAS**, all preconditions to the City Council's consideration and adoption of this Ordinance have occurred.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF COMMERCE DOES ORDAIN AS FOLLOWS:**

**SECTION 1. FINDINGS.** This Ordinance is an interim ordinance adopted as an urgency measure pursuant to Government Code Section 65858 for the immediate preservation of the public health, safety, and welfare, and is adopted and justified based on the following findings of the City Council, in addition to the recitals referenced above which are true and correct and incorporated fully herein:

A. On November 8, 2016, California voters approved Proposition 64, thereby enacting the AUMA which was effective immediately.

B. The AUMA legalized Non-Medical Marijuana Uses in California, and it is foreseeable that the City will see an influx of Non-Medical Marijuana Uses, or applications therefor, within the City that pose significant risks to the health, safety, and general welfare of City residents.

C. The AUMA authorizes cities to prohibit or regulate various Non-Medical Marijuana Uses within their jurisdiction, and if cities do not enact local ordinances prohibiting or regulating such uses, the AUMA and associated state laws and regulations will control.

D. Based upon the experience of jurisdictions that have legalized medical and non-medical marijuana uses, such uses frequently pose a likelihood of creating negative impacts on the health, safety and welfare of residents, especially if unregulated, including illegal sales and distribution of marijuana, trespassing, theft, violent robberies and robbery attempts, fire hazards and problems, and offensive odors.

E. The City's municipal code does not currently expressly regulate the use of land or structures for Non-Medical Marijuana Uses, and the City regulations do not clearly address the unique legal, land use, and public health, safety and welfare issues and impacts associated with Non-Medical Marijuana Uses.

F. The City has not studied or made a determination as to whether Non-Medical Marijuana Uses are consistent with the purpose and intent of the City's General Plan and Zoning Code, and the City requires time to undertake a review of its current regulation of marijuana-related uses and activities, the purpose and intent of the City's General Plan and Zoning Code, and the Non-Medical Marijuana Uses authorized by the AUMA, to determine the scope and extent of appropriate and necessary prohibitions and regulations of such activities to preserve the public health, safety, and welfare of its residents.

G. It is urgent that the City undertake a review of its current marijuana restrictions and regulations to determine how the City's current restrictions and regulations for the establishment and operation of Non-Medical Marijuana Uses can be revised to protect the public health, safety, and welfare, as the AUMA was only recently approved by voters and became effective immediately, was only recently clarified with passage of Senate Bill 94, and will be further clarified by the emergency regulations recently issued by the State, which currently remain open for public comment.

H. The best method for protecting the public health, safety, and welfare is to either prohibit Non-Medical Marijuana Uses entirely, or to adopt comprehensive regulations concerning the establishment and operation of Non-Medical Marijuana Uses, including, but not limited to, their location and operational standards.

I. During the effectiveness of this Ordinance, the City will take steps to update its code to ensure the City's laws are consistent with the goals, policies and standards of the General Plan and the goals of the City Council to protect the public health, safety, and welfare, while remaining consistent with state law.

J. Further, the City will consider existing and potential land uses within the City to assure compatibility between the location of potential Non-Medical Marijuana Uses and surrounding properties and study whether to prohibit Non-Medical Marijuana Uses or limit Non-Medical Marijuana Uses to certain zoning districts, which districts would be appropriate for such uses, what design and operating conditions and restrictions would advance the public's interest, and the extent to which the City is permitted to regulate such establishments in light of AUMA.

K. The City cannot enact a comprehensive set of restrictions and regulations without due deliberation. The City requires an indeterminate length of time to analyze the details of such comprehensive restrictions in light of the enactment of AUMA, SB 94, AB 133 and the imminent State regulations. Proposed restrictions would be detrimental if, during the period they are being studied and subject to public hearings, parties seeking to evade operation of these restrictions are permitted to operate in a manner which might progress to defeating the ultimate objective of those restrictions, in whole or in part. Therefore, approval of business licenses, permits, zoning entitlements such as conditional use permits, variances, and building permits, and any other required approvals would threaten the public health, safety, and welfare.

L. Based on the foregoing, there is a current and immediate threat to the public health, safety, and welfare, and an urgency ordinance seeking a moratorium on the establishment or operation of Non-Medical Marijuana Uses is warranted and necessary to protect the public against potential negative health, safety, and welfare impacts and to address potential deficiencies in the Commerce Municipal Code associated with Non-Medical Marijuana Uses.

M. The above recitals are true and correct, based upon all information presented to the City Council during its consideration of this matter, and hereby incorporated herein.

**SECTION 2. IMPOSITION OF A MORATORIUM.**

A. Government Code Sections 36937 and 65858 authorize the adoption of an urgency ordinance to protect the public health, safety, and welfare and to prohibit certain land uses that may conflict with land use regulations that the City Council is considering or intends to study within a reasonable time.

B. This Ordinance temporarily prohibits the activities set forth in Section 3 hereof, until such reasonable time as a detailed study of the potential adverse impacts of such activities on commercial, industrial, and residential uses and the general public health, safety, and welfare is completed, and the City can enact reasonable regulations and/or prohibitions on such activities to address such concerns.

C. This Ordinance is in addition to, and does not alter, supersede, or replace, in whole or in part, the City’s current ban on medical marijuana activities cultivation found in Commerce Municipal Code Chapter 5.61.

**SECTION 3. SCOPE AND APPLICABILITY OF MORATORIUM.**

A. Definitions.

All definitions, terms, phrases, and terms of art set forth in the Adult Use of Marijuana Act, Senate Bill 94 and Assembly Bill 133 are incorporated into this Ordinance, and shall govern the interpretation and construction hereof.

B. Moratorium.

- 1) No person, partnership, corporation, collective, cooperative, or other entity or association shall: (a) process, package, transport, deliver, distribute, purchase, obtain, sell, or give away marijuana, concentrated cannabis, or marijuana product or products; (b) plant, cultivate, manufacture, harvest, dry, or process marijuana, marijuana plants, or the marijuana produced by the plants; (c) smoke, vaporize, or ingest marijuana, concentrated cannabis, or marijuana products in any public place, business, or establishment, or in in any place which is visible from any public place; (d) transport, purchase, obtain, use, manufacture, or give away marijuana accessories; (e) cultivate marijuana for personal or commercial purposes, indoors or outdoors, with the exception of personal cultivation conducted entirely indoors upon the grounds of a private residence in accordance with Health & Safety Code Section 11362.2; or (g) engage in any commercial marijuana activity, whether for medicinal or non-medicinal purposes.
- 2) No person, partnership, corporation, collective, cooperative, or other entity or association shall engage in any activity for which a license or permit is required by the Adult Use of Marijuana Act, SB 94 or AB 133, or any activity for which a license or permit may be obtained from any licensing authority under the Adult Use of Marijuana Act, Senate Bill 94 or Assembly Bill 133.
- 3) No business license, permit, zoning entitlement, variances, or building permit, or any other approval be issued for the activities prohibited by this Section, and

any such business license, permit, zoning entitlement, variance, building permit, or other approval shall be invalid if issued.

C. The provisions of Paragraph (B) of this Section shall be construed broadly to prohibit any marijuana-related activity which is permitted, legalized, decriminalized, or authorized by the Adult Use of Marijuana Act, and which is within the police power of the City of Commerce to regulate, and which is not otherwise preempted by California law.

D. Term. This Ordinance shall be of no further force and effect for ten (10) months and fifteen (15) days after the adoption of this Ordinance unless extended in accordance with Section 65858 of the Government Code.

**SECTION 4. PENALTY.** Violations of this Ordinance shall constitute violations of the Commerce Municipal Code, and all penalties and remedies authorized under the Commerce Municipal Code shall apply to violations of the provisions of this Ordinance.

**SECTION 5. CEQA.** The City Council, on the basis of the whole record and exercising independent judgment, finds that this Ordinance is not subject to environmental review pursuant to Sections 15060(c)(2) and 15060(c)(3) of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA). Sections 15060(c)(2) and 15060(c)(3) pertain to activities that will not result in a direct or reasonably foreseeable indirect change to the environment and that are not defined as a project under Section 15378. This Ordinance has no potential for resulting in physical change to the environment directly or indirectly in that it prevents change to the environment pending the completion of the contemplated research and studies.

**SECTION 6. SEVERABILITY.** If any section, subsection, line, sentence, clause, phrase, or word of this Ordinance is for any reason held to be invalid or unconstitutional, either facially or as applied, by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Commerce hereby declares that it would have passed this Ordinance, and each and every individual section, subsection, line, sentence, clause, phrase, or word without regard to any such decision.

**SECTION 7. EFFECTIVE DATE.** This Ordinance: (a) is necessary for the immediate preservation of the public health, safety, and welfare; (b) contains findings constituting urgency; (c) is effective immediately upon adoption; and (d) shall take effect immediately upon its adoption and go into effect immediately following the 45<sup>th</sup> day of the moratorium enacted by Ordinance No. 691. This Ordinance shall be effective for a period of ten (10) months and fifteen (15) days unless extended pursuant to California Government Code Section 65858.

**SECTION 8. PUBLICATION.** The City Clerk shall certify to the adoption of this Ordinance causing it to be posted as required by law.

**PASSED, APPROVED AND ADOPTED** this 16<sup>th</sup> day of January, 2018.

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Oralia Y. Rebollo  
Mayor

ATTEST:

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Lena Shumway, City Clerk