

ORDINANCE NO. 2492

**EXTENSION OF URGENCY INTERIM ZONING ORDINANCE NO. 2488
CONTINUING A MORATORIUM IN ALL ZONING DISTRICTS ON THE
ESTABLISHMENT, CREATION OR EXPANSION OF ANY AND ALL COMMERCIAL
MARIJUANA USES AND ALL OUTDOOR MARIJUANA CULTIVATION, FROM AND
INCLUDING DECEMBER 16, 2016 THROUGH AND INCLUDING JULY 4, 2017,
UNLESS EXTENDED BY FURTHER ACTION OF THE CITY COUNCIL, TO TAKE
EFFECT IMMEDIATELY**

WHEREAS, medical marijuana dispensaries, defined by the Davis Municipal Code to mean any facility or location where medical marijuana is made available and/or distributed by a primary caregiver, qualified patient, or person with an identification card authorized by State law, are currently prohibited in all zoning districts in the City; and

WHEREAS, the City Council adopted Ordinance No. 2467 on January 19, 2016 in order to, among other things, expressly prohibit in all zoning districts in the City commercial cultivation and personal outdoor cultivation of medical marijuana, while allowing certain limited personal indoor cultivation; and

WHEREAS, pursuant to Ordinance No. 2467, Council determined to review the City's medical marijuana regulations no later than December 2016 in order to engage community dialogue and ensure the City's Municipal Code protects the health and safety of its residents while appropriately regulating medical marijuana; and

WHEREAS, the City Council intended for the prohibition of outdoor and commercial cultivation of medical marijuana in the City, combined with the current prohibition of medical marijuana dispensaries, to encompass all potential commercial-scale marijuana uses until such time as the City adequately considered zoning proposals for commercial marijuana uses and adopted appropriate ordinances and regulations, as necessary; and

WHEREAS, Proposition 64, also known as the "Adult Use Marijuana Act" ("AUMA"), is currently pending on the Statewide ballot to be considered by California voters at the November 8, 2016 election, which if passed would take effect on November 9 and, among other things, authorize personal non-medical use of marijuana and create a Statewide licensing scheme for commercial, non-medical marijuana businesses; and

WHEREAS, pursuant to the Medical Cannabis Regulation and Safety Act, as amended, the Bureau of Medical Cannabis Regulation, California Department of Food and Agriculture, and California Department of Public Health are currently developing regulations ("State Regulations") for State licensing of medical marijuana businesses, including commercial cultivation, manufacturing, testing, dispensary, and distribution businesses; and

WHEREAS, the State Regulations are required by State law to consider and mitigate a variety of identified environmental impacts and secondary effects related to commercial marijuana activity,

including water diversion, electricity usage, agricultural discharges, land conversion, use of nonvolatile and volatile solvents in production, and adequate security measures to protect against diversion, theft, loss or other criminal activity related to commercial storage and distribution of medical marijuana; and

WHEREAS, such State Regulations are not estimated to be fully developed and adopted until late 2017, with State licenses estimated to begin issuing on or around January 1, 2018, notwithstanding potential impacts or delays caused by passage of AUMA; and

WHEREAS, there may be marijuana related uses that the City may wish to expressly permit, and the City does not that want to undermine efforts that may have a positive impact on the community; and

WHEREAS, City Staff is therefore currently considering, studying and analyzing various medical and non-medical marijuana uses in light of the new and proposed State law and State Regulations referenced above, including proposed amendments to the City's existing zoning regulations to prohibit, permit, or conditionally permit certain commercial marijuana businesses; and

WHEREAS, City Staff desires further community dialogue and coordination with nearby jurisdictions before implementing regulations on what marijuana uses may be permissible versus those that may not; and

WHEREAS, the City has received inquiries from the public related to the establishment of commercial cultivation, manufacturing, and dispensary-related marijuana businesses in the City, including an inquiry of whether commercial marijuana manufacturing is currently a permitted use in the industrial districts; and

WHEREAS, the unintended and unregulated establishment of new commercial marijuana uses at this time, not already expressly permitted by the City's Zoning Code, poses a variety of potential known and unknown adverse impacts, such as offensive odors, gases, and other discharges related to commercial scale processing of marijuana products, unsafe or disapproved use of volatile and nonvolatile solvents intended to be regulated by the State Regulations, excess or dangerous waste, water, and electricity usage, and theft or other crime related to the storage and commercial distribution of commercial-scale quantities of marijuana; and

WHEREAS, the potential immediate enactment of AUMA by California voters further complicates potential development and application of zoning regulations related to personal cultivation and commercial non-medical marijuana businesses, including cultivation, manufacturing, retail, distribution, and microbusiness businesses; and

WHEREAS, in light of the potential known and unknown adverse impacts of commercial marijuana uses, currently unregulated by State or local law, potentially rapid change of State law and ongoing development of State Regulations, and City Staff's ongoing study of zoning proposals related to marijuana uses, the City Council finds that the current establishment, creation, or expansion of commercial marijuana uses, excepting those uses already established

and permitted by the City's Zoning Code, would create a current and immediate threat to the health, safety, and welfare of the City, its residents and businesses; and

WHEREAS, the City Council further finds that the establishment or creation of such commercial marijuana uses without appropriate regulation, or the allowance of outdoor personal cultivation of non-medical marijuana, might conflict with or be inconsistent with surrounding uses and intended zoning requirements, and if allowed to proceed under current zoning, new marijuana uses not already permitted in the City could conflict with, and defeat the purpose of, the proposal to study and adopt new regulations, consistent with State law, regarding marijuana uses; and

WHEREAS, City Council therefore desires to temporarily prohibit all marijuana uses which are not already permitted by the City's Zoning Code to provide adequate time to continue studying zoning proposals related to medical and non-medical marijuana uses and adopt regulations as necessary; and

WHEREAS, on November 1, 2016, the City Council adopted Urgency Interim Zoning Ordinance 2488 which Ordinance is effective November 1, 2016, through and including December 15, 2016, and

WHEREAS, by law, Urgency Interim Ordinance #2488 may be extended, prior to its expiration, by the City Council for up to an additional 10 months and 15 days; and

WHEREAS, this urgency ordinance is adopted pursuant to the requirements of Government Code section 65858.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF DAVIS DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Findings, Declaration of Urgency.

The City Council of the City of Davis hereby finds and declares that there is a need to enact an urgency interim ordinance establishing a moratorium on the establishment or creation of all marijuana uses in all zoning districts in the City, subject to the findings and conditions contained in this Ordinance. The City Council hereby incorporates the findings set forth in the recitals stated above. The City makes this declaration of urgency based, in part, on recent inquiries regarding the allowance of medical marijuana manufacturing businesses in the City, as well as general inquiries regarding the passage of AUMA and the establishment of similar commercial marijuana businesses. Specifically, the City Council makes the following findings:

- (a) If commercial marijuana uses are allowed to proceed without appropriate review of location and operational criteria and standards, including the safe and appropriate use of volatile and nonvolatile solvents for processing and refining marijuana products and security measures adequate to protect against theft and crime of commercial-scale quantities of marijuana, such businesses could have deleterious effects on surrounding neighborhoods and businesses that present a clear and immediate danger to the public health, safety and welfare.

- (b) If AUMA is approved by the voters on November 8, 2016 and personal outdoor marijuana cultivation of non-medical marijuana is allowed to proceed, it would conflict with, and defeat the purpose and intent of, current zoning requirements that prohibit personal outdoor cultivation of medical marijuana in all zoning districts due to nuisance, crime, and aesthetic factors. Allowance of any non-medical, commercial marijuana uses would likewise directly conflict with, and defeat the purpose and intent of, the current prohibition on commercial cultivation and marijuana dispensaries in the City until such time as the City has considered such uses and adopted appropriate ordinances and regulations.
- (c) The City Council finds that if establishment or development of medical or non-medical marijuana uses, beyond those already established and permitted by the City's Code, were allowed to proceed while the City is studying zoning ordinances and regulations for such uses, it would defeat the purpose of studying and considering zoning proposals to regulate and/or prohibit certain medical and non-medical marijuana uses.
- (d) Failure to enact this moratorium may result in significant irreversible changes to neighborhood and community character, and may ultimately conflict with new and pending State law and State Regulations and City ordinances and regulations.
- (e) Based on the foregoing, the City Council does hereby declare this urgency ordinance is necessary to protect the public health, safety, and welfare while the City is considering revisions to existing zoning regulations related to marijuana uses.

SECTION 2. Moratorium.

Except as provided in Section 3 and Section 4 of this Ordinance, the City Council hereby declares a moratorium on any and all commercial marijuana uses and outdoor marijuana cultivation within all zoning districts in the City. The City shall not approve or issue land use approvals or permits, including but not limited to zoning amendments, conditional use permits, variances, tentative subdivision or parcel maps, site plan approvals, design review approvals, and building permits or other applicable entitlements for the establishment or creation of commercial marijuana businesses, or modification of existing business for commercial marijuana uses, during this moratorium.

SECTION 3. Exemptions.

This moratorium shall not apply to those marijuana uses already expressly permitted or conditionally permitted in the City. Specifically, this moratorium does not apply to indoor personal cultivation of medical marijuana permitted and regulated by Davis Municipal Code section 40.26.276. In the event AUMA is approved and adopted by the voters on November 8, 2016, this moratorium shall not apply to indoor personal cultivation of non-medical marijuana as authorized by State law, provided that such indoor personal cultivation shall still be subject to the physical and operational requirements set forth in Davis Municipal Code section 40.26.276(d) to the extent such requirements do not conflict with State law. This moratorium also does not apply to existing deliveries and delivery services of medical marijuana to qualified patients in the City, to the extent such services are validly operating in the City as of the date of adoption of this moratorium and do not constitute medical marijuana dispensaries currently prohibited by the

Davis Municipal Code. This moratorium also does not apply to existing and established laboratories for testing, which are permitted or conditionally permitted in districts zoned for research and light industrial uses, including Commercial-Service (C-S), Industrial Research (I-R), Industrial (I), and similar planned development districts, provided that such testing facilities otherwise comply with the Davis Municipal Code and do not establish, create, or expand to commercial marijuana uses covered by this moratorium.

Furthermore, this ordinance does not apply to nor seek to restrict in any way the rights granted to medical patients within this community under Proposition 215 and Senate Bill 420, which recognizes the rights of patients and caregivers to associate under the form of collectives or cooperatives, for their medical marijuana needs. These forms of association are not included in the definition of “commercial marijuana uses” found in Section 5 of this ordinance. This exemption does not modify the prohibition against medical marijuana dispensaries currently in effect under the Davis Municipal Code.

SECTION 4. Hardship Exception.

Any person may apply for an exception from the provisions of this Ordinance on the grounds of economic hardship. Such application shall state the nature of the hardship and the reasons why an exception to this Ordinance is warranted. The application shall explain the relationship of the proposed marijuana business or use to the character of its surroundings, the impact the proposed business or use may have on surrounding properties, and how any such impacts will be mitigated. The application shall state why applying for and obtaining a conditional use permit or other land use approval or permit as set forth above, and/or why the delay in pursuing the use until the City completes its evaluation of current zoning regulations and proposals and makes amendments, revisions or modifications to the Zoning Ordinance as the Council deems appropriate, would constitute a taking in contravention of the law. The application shall also explain whether there are alternatives to the proposed use which have been investigated and the applicant's opinion of such alternatives. Such explanation shall, if appropriate, be accompanied by technical information to support the explanation. The application for a hardship exemption shall be heard by the City Council pursuant to the procedures established in Chapter 40 for the hearing of appeals under the terms set forth in Section 40.35, including but not limited to the public notice and hearing requirements set forth in Section 40.35.

SECTION 5. Definitions.

As used herein, “marijuana” means all or any parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. “Marijuana” also means the separated resin, whether crude or purified, obtained from marijuana, and marijuana as defined by Section 11018 of the Health and Safety Code. For purposes of this Ordinance, “marijuana” includes both medical and non-medical marijuana and medical and non-medical marijuana products.

As used herein, “commercial marijuana uses” means and includes any and all commercial marijuana activity, including but not limited to cultivation, manufacturing, production, preparation, refining, compounding, processing, blending, extracting, infusing, storing, labeling,

packaging or repackaging, transporting, distributing, delivering, or selling wholesale or retail sales of marijuana or marijuana products, and any business, person or entity that conducts or engages in these commercial marijuana uses.

“Outdoor marijuana cultivation” shall mean outdoor cultivation, planting, growing, harvesting, drying, curing, grading, or trimming of non-medical marijuana, if such cultivation becomes legal by the passage of AUMA.

SECTION 6. Existing Prohibitions Not Affected.

All marijuana uses already prohibited by the City’s Code shall remain prohibited and shall not be affected or modified by this Ordinance, including the current prohibition of medical marijuana dispensaries set forth in Davis Municipal Code section 40.26.275 and outdoor and commercial cultivation prohibited by Davis Municipal Code section 40.26.276.

SECTION 7. CEQA Finding.

The City Council hereby finds that it can be seen with certainty that there is no possibility that the adoption of this Ordinance, and establishment of a moratorium on the establishment or creation of commercial marijuana uses or outdoor cultivation of marijuana, will have a significant effect on the environment because the Ordinance will maintain current levels of development. It is therefore exempt from any California Environmental Quality Act (CEQA) review pursuant to Section 15061(b)(3) of Title 14 of the California Code of Regulations.

SECTION 7. Effective Date.

This Interim Ordinance shall become effective immediately and shall remain in force and effect from and including December 16, 2016, through and including July 4, 2017, unless extended prior to its expiration by further action of Council.

PASSED AND ADOPTED by the City Council of the City of Davis this 6th day of December 2016, by the following vote:

AYES: Arnold, Frerichs, Swanson, Davis

NOES: Lee



Robb Davis
Mayor

ATTEST:



Zoe S. Mirabite, CMC
City Clerk